UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

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UNITED STATES OF AMERICA

v. Docket No. 5:09-CR-216-FL

HYSEN SHERIFI,
MOHAMMAD OMAR ALY HASSAN, New Bern, North Carolina
ZIYAD YAGHI January 13, 2012

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TRANSCRIPT OF SENTENCING PROCEEDINGS BEFORE THE HONORABLE LOUISE W. FLANAGAN, DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

APPEARANCES:

For the Government:
Barbara D. Kocher, Esq.
John Bowler, Esq.
Assistant United States Attorneys
Office of the United States Attorney
310 New Bern Avenue
Suite 800
Raleigh, NC 27601

Jason M. Kellhofer, Esq.
United States Department of Justice
950 Pennsylvania Ave., N.W.
Room 2740
Washington, DC 20530

For Defendant Sherifi:
Robert J. McAfee, Esq.
McAfee Law, P.A.
P.O. Box 905
New Bern, NC 28563

For Defendant Hassan: R. Daniel Boyce, Esq.
Nexsen Pruet, PLLC
4141 Parklake Ave., Suite 200
P.O. Box 30188
Raleigh, NC 27612

For Defendant Yaghi: James M. Ayers, II, Esq.
Ayers & Haidt, P.A.
P.O. Box 1544
New Bern, NC 28563-1544

U.S. Court Reporter: Harold M. Hagopian, RDR, CRR
United States Courthouse
413 Middle Street, Rm. 311
New Bern, NC 28560
Tel. (252) 637-1200
hhagopian@aol.com

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P R O C E E D I N G S

(The following sentencing proceedings were held at the United States Courthouse, 413 Middle Street, New Bern, North Carolina, before the Honorable Louise W. Flanagan, District Judge for the Eastern District of North Carolina, on January 13, 2012 at 9:33 a.m.)

* * *

(All government and defense counsel are present. The defendants are not present.)

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[REPORTER'S NOTE: Variations in the spelling of foreign words and phrases, as well as the spellings of various names, reflect the fact that those words, phrases and names are spelled differently in various portions of the record.]

THE COURT: All right. Good morning.

Ms. Rudd, would you call the morning docket.

THE CLERK: Yes, your Honor.

The Court calls the following cases for sentencing: The United States of America versus Hysen Sherifi.

MR. McAFEE: Good morning, your Honor. Robert McAfee for Mr. Sherifi. He's in custody and we're ready to proceed.

THE COURT: Very good. Thank you.

THE CLERK: The United States of America versus Mohammad Omar Aly Hassan.

MR. BOYCE: Good morning, your Honor. Happy new year to you. Dan Boyce on behalf of Mr. Hassan.

With the Court's permission, we would ask the Court to allow us to go first. But, if not --

THE COURT: Yes, you will be first.

MR. BOYCE: Thank you, your Honor.

THE CLERK: The United States of America versus Ziyad Yaghi.

MR. AYERS: Good morning, your Honor. Jim Ayers for Mr. Yaghi. He's in custody, and I would ask if I could be allowed to sit up here?

THE COURT: Yes, you may. And to each of the defense attorneys, while during the course of the trial there was not room for staff, if there is someone in your office that you would wish to have with you to assist in your presentation, you're welcome to invite that person forward.

MR. AYERS: Thank you, your Honor.

THE COURT: Mr. Hassan.

(Defendant Mohammad Omar Aly Hassan entered the courtroom.)

A. This is the time that the Court's set aside for sentencing in the case of United States of America versus Mohammad Omar Aly Hassan. I want to inform you how the hearing will proceed.

As counsel is familiar, the Court must fashion a sentence that is sufficient, but not greater than necessary to accomplish the goals of sentencing. And the Court is required to begin the sentencing decision by correctly calculating the advice of the guidelines.

The sentencing guidelines are a tool implemented by Congress to suggest an appropriate sentence based primarily on the offense at issue and the defendant's criminal history.

I may accept the undisputed portion of the report as a finding of fact in establishing the guideline range.

And in this instance much in the report is disputed.

If you have objected to any aspect of the report, the Court must resolve those objections. And, in this instance, it's necessary to resolve certain objections before certain other ones, so the course of the hearing will proceed subject to that.

The burden is on the government to prove facts underlying any enhancement, and the same burden is on the defendant to prove any downward adjustment is warranted.

Now, the sentencing guidelines are advisory, and the Court has substantial discretion to impose a sentence either above or below the guideline range, if necessary to accomplish the purposes of sentencing. And the Court need not, under current law, determine that the guideline range is a reasonable one.

Now, after I've calculated the advisory guideline sentence for you, Mr. Hassan, I must allow, as I will, both sides the opportunity to argue for whatever sentence they feel is appropriate. And the factors set forth in 18 United States Code, Section 3553, are focused on sharply at this point.

The Court will base it's sentencing decision on the nature, circumstances and seriousness of the offense and the defendant's criminal conduct.

The Court will also fashion and sentence that regards the need to promote respect for the law, as required, that provides just punishment, that deters this type of conduct, that protects the public from further criminal activity, and provides the defendant with any needed training or medical treatment.

Now, before I fashion the sentence finally, the Court will give certainly the defendant individually the opportunity to speak, and then I will fashion a sentence based on an assessment of the 3553 factors and the information made available. And I'll explain why I chose that particular sentence.

Now, Mr. Boyce, from your representation many times before the Court, you're well familiar with this process. Are there any questions that the defendant would have at the start of this sentencing hearing?

MR. BOYCE: There are not, your Honor. We've been through it all. We're ready to proceed.

THE COURT: Very good.

Mr. Hassan, have you had enough time to review the presentence report? It's a very lengthy one.

DEFENDANT HASSAN: Yes, your Honor.

THE COURT: Are you ready for sentencing today?

DEFENDANT HASSAN: Yes, ma'am.

THE COURT: All right. Please be seated.

The defendant is here to be sentenced upon return of a jury verdict of guilty to the crime of conspiring to provide material support to terrorists. The Court picks up this over 100 page presentence report, and this probably brings the Court fairly quickly to the nature of the government's objection that by the process that the defendant has engaged in to object to the report, that he has short-circuited normal procedures as set forth in the Court's local rules and the Rules of Criminal Procedure for noting objections to the proposed findings of the presentence report.

I don't think it's necessary to take up the government's motion to deny defendant's demands and objections to the presentence report. I think the point is made, and correctly so, that this is very unusual and not normal, and does thwart the advocacy process to some degree. But I'm going to deny that motion and reflect on what the government has presented, though, in considering a sentence that's sufficient but not greater than necessary.

Now, the offense conduct is set forth in the presentence report, and I also don't find favor with defendant's arguments that the probation officer should take defendant's presentation and make that a part of the presentence report.

The defendant objects, but going forward with what the probation office has put here, there's a very thoughtful explanation of the charges and convictions at issue. The related case is disputed, but the name Bajram Asllani is referred to. The offense conduct is set forth here with regard to the information made available to the probation office. I'll take up any particular objections shortly.

The probation officer didn't, as I don't think they usually do, have opportunity to reflect on the trial transcript; but I presided over the lengthy trial and am very familiar with the evidence presented in this case.

Now, the probation officer also turns my attention and the defendant's to the defendant's criminal history, which, for Mr. Hassan, began at the age of 16. Mr. Hassan is presented here as a mid-level criminal offender with Category III. Between I and VI he's deemed a Category III criminal.

I note he assaulted someone by pointing a gun at the age of 16, and was found guilty. He assaulted a female, though the defendant would dispute the circumstances of this. But the Wake County public records reflect that in 2007 he did assault Sonya Zaghloul.

At the age of 21 the defendant pleaded guilty to the crime of false imprisonment, and the probation office writes that on December 28 of 2008, that you, Mr. Yaghi, a codefendant in this case, and an individual named Kalled Shanab kidnapped and restrained a North Carolina State University student during a robbery.

The probation officer notes that you were charged with aiding and abetting and first-degree kidnapping, but pleaded guilty to the lesser offense, and additionally was charged with aiding and abetting a robbery with a dangerous weapon, but that charge was dismissed.

The probation officer notes that the defendant declined to engage in probation and actually served out the full 45 days imposed by the sentencing judge. And that information is explained a little further by the defendant in what has been received since this report was made.

At the age of 21 the defendant was found guilty of possessing marijuana. There does appear to be an issue of marijuana addiction, as presented here.

These activities don't reflect any assessment of points for the other crimes that the defendant was charged with.

Between 2005 and 2009 the probation officer indicates that the defendant was charged with a number of offenses that didn't result in an adjudication of guilt. That includes two counts of possession of marijuana in 2005 and 2008; three counts of simple assault spread out over two years, the years 2008 and 2009; injury to personal property in 2009; and that same year the defendant was charged with contributing the delinquency of a minor.

The defendant's family information is given to the Court. His parents are from Egypt. The defendant was born in this country, and the Court has been given information concerning more particularly the nature of the family relationship.

I've reviewed also the information given here concerning substance abuse, and I've commented on that already, as evidenced in the record.

The defendant has developed his education up to and including attendance at North Carolina State University and was doing well there.

The financial circumstances, Mr. Hassan, are also given to me.

And now, with this background that I have reviewed prior to today and commented on here, and also having reviewed all of the letters that have been sent to the Court -- and there are certainly many letters that have been sent -- and the substantial filings that you've made as recently as January 11th, which includes your affidavit, Ms. Zaghloul's affidavit, the affidavits of others, the commentary of a doctor, photographs, your sentencing memorandum -- I've reflected on all of this.

I'm not making any decisions; I'm simply telling you what the probation officer now finds. And that is that the base offense level is a 33, that 3 points should be added because you intentionally selected a victim or property because of someone's race, color, religion, national origin, ethnicity, gender, disability. That, moreover, 3 points should be added because there was an intended victim or victims that was a government officer or employee, and the offense was motivated by that status.

And this is a substantial issue in this case; that 12 points should be added because the offense is a felony that involved or was intended to promote terrorism.

And so, under these guidelines that the Court's required to consider and determine the advice of, it's the opinion of the probation officer that this adjustment is also warranted.

I believe each of the objections that I've commented on are shared by your codefendants, Mr. Sherifi and Mr. Yaghi.

You're also objecting to the 2-point adjustment because you attempted to obstruct or impede the administration of justice. And I believe this is unique to you, and it relates to your directions to Ms. Zaghloul to take down certain postings on a web site and otherwise destroy certain evidence, when it was alleged that you knew you were subject to FBI and federal government oversight at that point in time.

The adjusted offense level is a 53. No points have been taken off for acceptance of responsibility.

Under the guideline sentencing scheme, it's not possible for the total offense level to be considered 53; rather, it defaults to the 43 number.

The terrorism adjustment takes you from a Category III criminal history to a category VI. And so, it has substantial effect on the advice of the guidelines in several respects.

And skipping over those many pages of your objections -- I want to come back to those, of course -- but I would refer now to what probation office believes is the advice of the guidelines.

All right. With the criminal history category of VI and a total offense level of a 43, as to the crime in the count of conviction, it carries with it a maximum term of imprisonment of not more than 15 years. You cannot be sentenced to more than 15 years. And so, that, in this case, caps the advice of the guidelines.

Were it not for the statutory impact, the guideline imprisonment range would have been life in prison. Now it is 180 months. That is the advice of the guidelines.

You're not eligible for probation under the guidelines, though, by statute, you are, one to five years.

Your behavior can be supervised when you get out of prison for as many as three years. The fine could be as much as a quarter-of-a-million dollars. The guidelines suggest a range, however, in your case that starts at $25,000.

Restitution is not an issue.

There is a $100 special assessment, which is due immediately.

Now, Mr. Boyce, I would welcome your thoughts, and I'll give Mr. Bowler an opportunity, as well. What do you think is the most efficient way to go forward to decide the matters that bear on the advice of the guidelines?

MR. BOYCE: Thank you, your Honor. Your Honor, Mr. Bowler and I talked briefly before Court, and, quite frankly, we think the Court has quite a bit of information in front of you. And it's abundantly apparent that you have read and digested all of that information, and, on behalf of my client, we appreciate that.

I do not anticipate regurgitating every single part of that. The Court has had this case two-and-a-half years. You sat through an entire trial for about four weeks. So, you certainly know the facts as well as anyone. So, I do not plan on going through detail by detail.

THE COURT: All right.

MR. BOYCE: What we tried to do is give to the Court some information in an organized fashion so I can quickly refer to it and just remind the Court where it is in case you have a question.

THE COURT: Okay.

MR. BOYCE: And then I'll be free to answer questions.

THE COURT: Well, I'll note your diligent advocacy, as you say, over the course of two-and-a-half years. And you have given the Court a great deal of information that will enable the Court to fashion a sentence that's sufficient, but in the greater than necessary. And I'll hear every one of your objections, and I'll make a decision. And when I'm finished and I finally decide the sentence, I'll turn to your client and I'll tell him how he can appeal.

MR. BOYCE: Thank you, very much, your Honor. May I proceed?

THE COURT: Yes.

MR. BOYCE: Thank you, your Honor.

Once again, I will try to go through the objections and point out a couple of things. Let me start first with the reason why we've provided information to the Court with the objections and ask that it be made part of the record. It has as its basis a number of reasons.

First and foremost, what's in that presentence report can significantly impact Omar Hassan's Bureau of Prison time.

He knows he's looking at a potential active sentence, and what's deeply concerned us about what was in the presentence report was a paucity of evidence about information we believe came out at trial and that was contained in the FBI-302s that the probation office said they had reviewed.

Just as an example, we have an exhibit that we have provided to the Court, a list of exculpatory information or mitigating information regarding role in the offense. It was just nowhere to be found in the presentence report.

That was our concern of, number one, making sure, when you consider the terrorism enhancement, when you consider the role in the offense, and when the Bureau of Prisons considers what to do with Mr. Hassan -- you'll see he's in a yellow outfit. There's a reason for that color that will carry with him when he goes into the Bureau of Prisons system, if you give him more time.

So those are -- that's why it's important to us to make sure that the presentence report fairly and accurately presents not only aggravating information and not only the evidence that the government has presented, but also evidence that came out at trial.

So, even if it's not within the content of the presentence report, itself, we would have requested that the information we've put in our objections be somehow attached to the presentence report that goes to the Bureau of Prisons.

THE COURT: Okay. The presentence report right now is of an extraordinary length. It's 107 pages. And it's your request that this document be tendered to the Bureau of Prisons.

MR. BOYCE: The presentence report I've got is 25 pages.

THE COURT: All right. Well, I've got enveloped into this by the probation office -- and it may just be the manner in which it came into chambers -- your December 28th letter and all of the exhibit.

MR. BOYCE: Okay. That's -- you're including that as the presentence --

THE COURT: Well, I mean, let's talk about -- what is your intent, because I don't want this to be labeled just by the way it came in on the fax machine or --

MR. BOYCE: The only presentence report I've got is 25 pages.

THE COURT: All right.

MR. BOYCE: The presentence report.

THE COURT: And so, that's all you're seeking to go into the Bureau of Prisons?

MR. BOYCE: No, I'm asking that the other information regarding Mr. Hassan's participation and --

THE COURT: Okay, all of that summarized -- I've got a binder, I've got the pictures, and I've got so much that's come in from you, including what was filed on January 11th. Let me just sit back and listen to you. All of that, do you want that to go to the Bureau of Prisons?

MR. BOYCE: No, your Honor. I think the summaries and the two letters I've sent with the two objections would suffice.

THE COURT: All right. There's one letter dated December 28th.

MR. BOYCE: Correct; and a letter dated January 5.

THE COURT: Okay.

MR. BOYCE: Your Honor, the December 28th letter --

THE COURT: Uh-huh.

MR. BOYCE: -- which outlines the role in the offense, it directly relates to Mr. Hassan, is only 28 pages.

THE COURT: Right.

MR. BOYCE: It does have some attachments. We're not asking that the attachments go to the Bureau of Prisons.

THE COURT: All right. That's -- the first attachment is Ms. Zaghloul's 2009 affidavit?

MR. BOYCE: Correct, your Honor.

THE COURT: And so, you're just seeking the letter. And then your next letter?

MR. BOYCE: Is January the 5th. That is two letters, but it has the portions from the FBI-302s. It's --

the letter's two pages and the list of missing 302 information is about five or six pages. And I can count and give you an exact number, your Honor.

THE COURT: Okay.

MR. BOYCE: Seven pages.

THE COURT: All right. And so, that's excluding all of the exhibits between the two?

MR. BOYCE: Yes, your Honor.

THE COURT: All right. So, that's the request, the narrow request. What says the government?

MR. BOWLER: Your Honor, Mr. Kellhofer, with the Court's permission, will address the Court on Hassan and Yaghi, and I will address Sherifi.

THE COURT: All right.

MR. KELLHOFER: Your Honor, we feel this case should be handled like every other case. We don't see any point in the inclusion of those matters to the BOP. They're appropriate and absolutely should be considered by you for purposes here today. The only outcome that we can see is that it would, for some reason, provide the BOP with some incentive or reason to disagree with the outcomes that occur here today. It has no purpose.

THE COURT: Okay.

MR. BOYCE: Here's the problem, your Honor. The probation office is not an extension of the U.S. Attorney's

Office. I told Mr. Wasco, nothing personal to him or his office, but I was here when the United States Sentencing Guidelines came into effect, and it was to make sure that there was not a disparity of sentences across the United States, but, instead, to have uniformity of sentencing.

Therefore, the probation office, as an extension of the judiciary, not the U.S. Attorney's Office, has an obligation to give the Court a fair and impartial and balanced report so the Court can make it's determination. With all due respect to the probation office, that was not done in this case.

THE COURT: Okay. I express no opinion on that pronouncement. I am familiar, too, with the responsibilities of the offices.

It's within my discretion, and I will allow these two letters to come in and be attached as an addendum to the presentence report to amplify on how the probation office presented Mr. Hassan's objections.

Would that be sufficient for you?

MR. BOYCE: That would be, your Honor. Thank you, very much.

THE COURT: All right. So, with reference to the December 28th letter and with reference to the January 5th letter, both of those will come in as a supplement to the addendum and amplify on the defendant's objections as presented by the probation office.

So, let's turn now to those objections and see how efficiently we can move forward. There are some factual ones and there are some legal ones.

Did you wish to suggest, Mr. Kellhofer -- I said I would give the government an opportunity to -- Mr. Boyce indicates he's conferred before the start of the hearing, and I appreciate he's identified some efficiencies to you. Do you have anything you want to note, before we go forward, for the government?

MR. KELLHOFER: No, not at this time. To the extent I address any of those, I believe it can be worked into our argument after you've heard the defendant.

THE COURT: Well, I'd have particular interest in hearing further from the government on some of the legal objections, particularly the terrorism objection, and I'd give you plenty of opportunity to talk, as I'll give you, Mr. Boyce.

All right, Mr. Boyce, you object that your client went overseas to do anything other than go to Israel for leisure and vacation?

MR. BOYCE: Your Honor, again, I think with the Court's acceptance of the information we provided in the objections, that's a starting point. And I'm not going to belabor it. We'd also -- I'd point out to the Court where the additional information is.

We've submitted an affidavit to the Court from Omar Hassan. That is -- yes, it's Exhibit A. I believe we have tried to tab for the Court the different sections of the exhibits.

Omar Hassan outlines what he was thinking before the trip and during the trip. And I would submit to the Court that Daniel Boyd's testimony was entirely consistent with that. Dylan Boyd's testimony was entirely consistent, and Zak Boyd's testimony was entirely consistent with what Omar Hassan said about that trip.

The government, I understand, at the sentencing of Mr. Zak Boyd and Dylan Boyd, basically moved for a downward departure based on substantial assistance and said they've found the information that they presented to the jury to be credible. Therefore, because Omar Hassan's affidavit is entirely consistent with their affidavit, we would submit that there were perfectly legitimate reasons for that trip.

Now, I know he has been convicted of conspiracy to provide material support. But, just as importantly, he was found not guilty of conspiracy to kill, murder, maim, kidnap, etc., and I think that is a -- that makes Omar Hassan's case significantly different from any other defendant in this alleged conspiracy.

We know, we acknowledge he has been found guilty, and we're at the point now where the Court has to take into consideration he has been found guilty by a jury. Mr. Hassan understands that, too, so we're moving forward on that.

But what we wanted to do is to give Omar Hassan's explanation for the trip, consistent with the Boyds, but also other witnesses who were there for the trip. So, the second piece of evidence -- pieces of evidence we've given is found at Tab B -- excuse me, Tab C. Those are the affidavits not only of Mr. Hassan, but Omar Askar, Anas Askar, Mohammed Askar and Sonya Zaghloul.

So, I'm not going to regurgitate everything they said about the trip, but we've provided pictures from the trip, their summary of Omar's behavior during the trip. In fact, he didn't talk about trying to reenter Israel or try to be in contact with Mr. Boyd, etc.

So, I think, now that we've gotten all that before the Court, we would just ask that the Court take that into consideration.

THE COURT: All right. Did you want to be heard specifically, Mr. Kellhofer?

MR. KELLHOFER: As to that point alone, your Honor, it would again be our position that this is an adjudicated fact. Trying to take the acquittal and make a grand matter out of it, we think it inappropriate and speculative. And we can go back and forth as to why exactly that occurred.

Our position is that the acquittal as to the 956 charge is of no relevance here to these proceedings. The evidence that we presented at trial, we feel, was compelling and it apparently was so to the members of the jury who convicted him.

As to the specific 2007 trip, it is our position that the purpose of that trip was in furtherance of the conspiracy of which he was convicted. It is our position that the evidence displayed that. To go back and relitigate these issues is not helpful, in our opinion.

THE COURT: Well, the objection is noted, and the inference the defendants argue is argument, but there is certainly evidence that the Court heard, the jury heard, that would impugn the motives of the defendant in traveling overseas in 2007. I make specific reference to Daniel Boyd's testimony, and also I would comment, too, on Elena Mohammad's testimony when she went to Ziyad Yaghi after her son had fled the country. She was told that he had gone to the place where I was the year before. That would be the trip that this defendant took.

So, there's some other evidence in the record, and the findings of the probation office, I think, are credible and reliable in this regard. But certainly there were also very innocent reasons to have taken this trip. So, I think there were some mixed motives there.

But the burden of proof has been sustained by the government as to that characterization. But I'll certainly hear further from you on that at the end.

Now, you have objected to the offense conduct section also as misleading and mischaracterizing this defendant's role. And I'd imagine you'd want to bring to my attention some of what you referred to already.

MR. BOYCE: A lot -- quite frankly, a lot of it is.

THE COURT: Okay.

MR. BOYCE: What we heard at trial was witness after witness after witness say that Mr. Hassan -- they didn't know Mr. Hassan, they didn't participate in any way with Mr. Hassan, that after 2007, as far as the conspiracy is concerned, Mr. Hassan basically disappeared, wasn't part of the ongoing lives of the Boyd family.

The three informants never met him, didn't hear of him, or anything. And these informants were paid by the government for years and years and years to infiltrate the Daniel Boyd conspiracy.

I think there is a plethora of evidence not only in the FBI-302s, in the list that we've provided to the Court, showing that Mr. Hassan was not an integral part of that conspiracy.

At the very most, the only thing the government really presented was Mr. Hassan's interest in jihad, his interest in current events going around the world, and his discussion on Facebook about certain things. And he will stand to you in a few moments before the Court and say, I did and said some stupid things on Facebook, but he recounts not only his communications with Ziyad Yaghi in 2006, when Ziyad Yaghi allegedly went abroad, as nothing more than saying, hey, buddy, how you doing. And they didn't introduce any e-mails or any substantive evidence to suggest that communication back in 2007 was anything but, to use Mr. Boyd's term, benign.

Same thing with 2007. After 2007, it seems like the only slice of the pie regarding this conspiracy that the government has presented as against this particular defendant is that 2007 trip, where they went overseas, they got denied entry, they came back home. To me, that is important information in determining whether or not, when we get to that objection, role of offense adjustment.

THE COURT: Okay. Well, your objections are noted on the record, but, as you could imagine, I'm also assessing your client, vis-a-vis Mr. Yaghi. And all of this started, according to the testimony, in 2006 with an investigation into Mr. Yaghi and to Mr. Boyd. And then concentric circles came together. There was some overlap. So --

MR. BOYCE: And I would point out, your Honor, one very important point about that. I believe this was the testimony at trial. Ziyad Yaghi is the one that got Hassan involved in this whole thing. And they were good buddies. And it was Ziyad Yaghi's contact that even brought Mr. Hassan's into contact with everybody else.

THE COURT: I think there was some influence there.

Okay, objections to the enhancement under 3A1.1(a). All three defendants object to this enhancement for intentionally selecting any victim or property because of the actual or perceived race, color, religion, national origin or ethnicity.

The Court notes that advisory notes to this guideline reference that it's meant to apply to hate crimes, which are defined fairly broadly.

The Court must find the defendant intentionally selected victims not based on a preponderance of the evidence standard, which is customary, but a very heightened one, in fact, beyond a reasonable doubt.

All right, Mr. Kellhofer, what says the government?

MR. KELLHOFER: Your Honor, this entire conspiracy -- and what I'm about to say, to some extent, will roll over to the next few objections that I think you'll be addressing.

THE COURT: I'm sure other defense counsel are listening very carefully.

MR. KELLHOFER: Yes, your Honor. And, to some extent, therefore, I think this will apply to the selection of victim the -- the victim as a government employee, and then, additionally, it rolls over into the terrorism enhancements.

So, I understand we're going to address each one of those, simply say that I think that this is all sort of wrapped up and rolled in together.

The conspiracy here involved an attempt based at pursuing what was a twisted version of Islam. The underlying basis for this entire conspiracy was based off of their understanding, their twisted version of Islam. And that entailed instituting shari'ah law. That entailed conducting violence against any individual who they determined to be non-Muslim, to be kufr, to be munafiq, a hypocrite.

They did not say we are going to kill Bob. Rather, they chose a class of individuals. And we believe that the probation report does an extremely adequate job of referencing the fact that that is absolutely appropriate. And, in this case, they chose a very specific class of individuals. And that class of individuals was those individuals who do not meet their definition of what was an appropriate religion.

I think particular to this, as well, is -- turning to a specific fact, I suppose -- the -- one of the items that had been introduced at trial was the *44 Ways to Support Jihad*, which, as we heard at trial, was premised upon *39 Ways*, and that *44 Ways* was a work by one Anwar al-Awlaki, a radical.

That *39 Ways* was a document that was specifically located on defendant Yaghi's computer. In addition, there was vast talk between Omar Hassan and defendant Ziyad Yaghi regarding Anwar al-Awlaki and praising him.

And, in fact, Dylan Boyd testified that he was sent a copy of 44 Ways from Omar Hassan, stating that this is something that it is incumbent upon all true believers to read. And, within that document, one of the ways was to have enmity towards the disbelievers and hate them.

It is our position that this certainly meets the definition of what is required for a hate crime is specific to 3A1.1.

THE COURT: Mr. Boyce, do you want to respond?

MR. BOYCE: Yes, your Honor. And, again, what's been extremely difficult in this case throughout is trying to hold Omar Hassan accountable for the sins of all. This sentencing relates only to Omar Hassan. It doesn't relate to anything Daniel Boyd or Subasic or Sherifi or any of those guys were talking about when he was present.

The one mistake, if you will -- or several mistakes Omar Hassan made was trying to be cute on Facebook in saying things that were inappropriate and provocative, at best. But there is not a single e-mail, there is not a single posting that said we are going to do this. What he did is, in these stupid raps that he -- I think Yaghi did it and Omar had it posted, and he pasted and repeated something that Yaghi said.

The statute, itself, said that the government has to prove beyond a reasonable doubt that he intentionally selected any victim or any property as the object of the offense of conviction. Even if he may have made some ethnic slurs by posting Yaghi's earlier rap, he did not have a selected victim that was the object of the conviction. They tried to, in essence, take something he said on Facebook and wrap it in to sucking him into the conspiracy and saying and we know what the conspiracy was all about.

So, we object to the three-level increase because of burdens on them to prove beyond a reasonable doubt that there was a specific victim or property that was the object of the offense of conviction.

THE COURT: All right. It's perhaps closer than some, but the government has sustained its burden of proof beyond a reasonable doubt. There are these Facebook postings disparaging members of the Jewish faith and non-Muslims, and there is sufficient evidence to support a determination that this defendant was targeting individuals based on ethnicity or religion.

Anwar al-Awlaki was quite mesmerizing for Mr. Hassan. The Court doesn't find it credible that he could not understand, in 2007 and 2008, the radicalism of this individual. And the Court recalls testimony that he went to Mr. Boyd's house in, I believe, January of 2007, and this document was expressly discussed. Mr. Boyd understood, and he testified what the purposes of the defendant's trip was, to go and find a battlefield. And he understood the reference to the word "marriage" very differently from its customary meaning. And there was a clear effort to enter into Israel, and there are these Facebook postings with specific rants against members of the Jewish faith.

So, I think and find that the government has sustained its burden, and these points were properly added by the probation office.

Now, 3A1.2, as counsel said, seems to roll into that. I might not entirely agree on that. I'll hear you on 3A1.2, objecting to the three-level enhancement For targeting official victims.

MR. BOYCE: That's right, your Honor. And I agree, it does kind of roll into that, too. There was no designated official, officer or employee. We submitted to the Court a chronology that's available on the Internet about the strife going on between Israel and Palestine during that period of time.

There's no suggestion in any of the evidence presented at trial which would support that there were U.S. troops over there or there were some public officials over there when Omar

Hassan went to Israel that he targeted as a government officer.

Likewise, because he was out of the alleged conspiracy after that summer of 2007 trip, the later sins of the group, the targeting Quantico, I believe it was, and talking about doing this or that in Washington, D.C., had nothing to do with Omar Hassan. We pointed out at trial the Rosstraining.com posting in 2008 where Mr. Hassan said, I do not support terrorism.

We do not suggest to the Court that even if you use the 2007 trip as participation to find him guilty, by 2008 he had dis -- unjoined or removed himself from this terroristic group.

So, for that reason, anything that happens later on in that span of time does not apply to Omar Hassan. He's withdrawn from the conspiracy. And, therefore, the three-level enhancement for that activity couldn't be held against him.

THE COURT: What says the government? Do you want to be heard?

MR. KELLHOFER: Yes, your Honor. We do believe that the underlying conspiracy rolls into this, as well, because during the testimony of Daniel Boyd he simply stated that during conversation with Omar Hassan, with Ziyad Yaghi, regarding what he referred to as corrupt jihad, that everyone there understood that to include fighting, and fighting against NATO forces. It is our position that the NATO forces certainly includes American troops. It's well understood. This is a conspiracy case, as well.

So, to say that it is -- it is absolutely appropriate to refer to what was going on with the other individuals in terms of this entire conspiracy.

And it is our position that Omar Hassan's involvement at that time, particularly to that conversation which Daniel Boyd was referring to, included, as he said, NATO forces. And that's what this underlying conspiracy was intended to target and fight against.

THE COURT: Remind the Court, when was that conversation?

MR. KELLHOFER: My understanding is the conversation took place when Ziyad Yaghi had brought Omar Hassan to meet Daniel Boyd in, I believe, early 2007.

THE COURT: So, that's the meeting at the house where I made mention of the Court recalls the testimony concerning discussion of Anwar al-Awlaki's treatise. But you're saying there was a discussion about NATO forces being subject to attack overseas?

MR. KELLHOFER: Yes, your Honor, that Daniel Boyd specifically included that when he was defining what corrupt jihad meant and what that meant to the individuals present.

That included -- it meant fighting, and it meant fighting to include NATO forces.

MR. BOYCE: With all due respect to Mr. Kellhofer, I don't remember hearing it quite that way. And if there were any reference at all to NATO in the year 2007, it might have been some general discussion about NATO. But I don't remember anything where Mr. Daniel Boyd testified that they were going to gear up and go overseas in the summer of 2007 to kill NATO forces. I don't believe the record's going to support that. The burden is on the government, I think, to prove this kind of increase. I would submit they have not met their burden.

THE COURT: I suppose we're all hampered by the lack of a certified transcript being produced yet. One would not timely be due. But we are reflecting on our recollection of several months ago, and I don't recall a specific reference in this context to fighting NATO forces.

I think something more is required for this enhancement, and I'm inclined to sustain the defendant's objection and not add the three points for targeting an official victim.

This enhancement seeks something more, something very particular, and I don't believe the government has shown that by a preponderance of the evidence. And so, with respect to this objection, I'm sustaining it.

It's not going to have an effect on the guidelines, per se, but it should be noted in the record.

Now, the closest thing, I think, really that comes to it is the Ross Training video and the Support Our Troops logo. And that's just not enough, I think, to merit these three points.

Now, moving on to the next objection, I'd like to talk about the objection to not knowing Bajram Asllani, and I don't think that voids the reference in the report. But I don't think there's been any specific tie-in of your client to this individual, who's the subject of a separate but related prosecution and remains in Kosovo, I believe.

MR. BOYCE: Understood. And we don't need to be heard further.

THE COURT: Okay. Now, there are a lot of other objections. The statement of the defendant focused on engaging in violent jihad outside the U.S. being refuted based on the acquittal of Count 2. I don't find that the jury's decision on Count 2 has the force and effect that Mr. Hassan does, and so, therefore, would overrule that.

There is no evidence that his contact with Yaghi in 2006 had anything to do with Yaghi's efforts to join the mujahidin. I think you're back to arguing the inferences. I think the record does support the defendant stating contact with Mr. Yaghi, as perhaps others did as well during that period.

The defendant -- there's no evidence that the defendant joined Mr. Yaghi in 2006, in Jordan or elsewhere.

The public records reflect a conviction of an assault on a female while the defendant says he didn't hit Ms. Zaghloul, and she would affirm that she was not hit by the defendant. That criminal history is what it is, and there was a conviction. And I note the defendant did, in fact, attend some anger management courses, or something similar, which he successfully completed afterwards.

Pleading guilty to misdemeanor false imprisonment, he submits he didn't kidnap and restrain the individual. Well, again, the record is what it is.

What else, Mr. Boyce, is necessary to be considered before we turn our attention to that significant objection to 3A1.4 for terrorism?

MR. BOYCE: Your Honor, I think that covers all the factual objections.

THE COURT: All right.

Well, I'd like to hear from the government on this. I think the defendant has laid it out. You have filed in your motion requesting the Court to strike the response of the defendant. You have some presentation here about this. But I'd like to hear further from the government.

MR. KELLHOFER: With regard to the terrorism enhancement, we would first state that the arguments made within the PSR, the statements made by the probation officer, we adhere to those. We believe those to be accurate.

In addition to the filing that we supplied, we still stand by that. And in addition to those, in fleshing those out, your Honor, we're setting the context here.

The terrorism enhancement under 3A1.4 does require a federal crime of terrorism. And the defense has appropriately pointed out that it is a two-part test, essentially. That simply being convicted under what's known as a terrorism crime, such as 2339A, is not necessarily a federal crime of terrorism and that it does require the additional specific intent element with regard to an intent to coerce government --

THE COURT: It can be confusing, and I think the *Chandia* decisions are not a model of clarity. But there clearly needs to be something more here. And I think we're all of agreement.

MR. KELLHOFER: Yes, absolutely. And it is our position that the one thing that *Chandia* does -- is clear on is that the courts need to try and be clear on this.

And so, here I do think it important that the Court have sufficient bases to find that specific intent and specifically note that it's making its decision, should it determine the terrorism enhancement to be appropriate, on the -- what the basis for it's determination is.

Here, again we have a conspiracy who, with -- without regard to any other alleged discrepancies between testimony. What is certain here is what was defined by anyone who testified as to the corrupted ideology that was the basis for the conspiracy. And that corrupted ideology revolved around a belief that violence was obligatory on all Muslims, and that this violence was for a purpose, and that purpose was to institute shari'ah law, because it is appropriate to rid the world of all non-Muslims, or kufr. That came from every individual who testified on that subject. And it was clear.

The evidence of Omar Hassan's intent, evidence of Omar Hassan's mindset, all showed beyond a reasonable doubt that that was his belief, as well. Individuals testified --

THE COURT: What's the standard?

MR. KELLHOFER: It is our position that the standard is by a preponderance, your Honor. We understand that that has not been done definitively determined in the Fourth Circuit or within the circuits generally, and that there is some dispute. It would be our position that the appropriate standard is a preponderance.

THE COURT: I'm going with clear and convincing.

MR. KELLHOFER: It is our position that regardless of which standard you are utilizing, whether it be clear and convincing or preponderance, that it's met.

THE COURT: And that's how you started.

MR. KELLHOFER: That being the case, the evidence that was displayed throughout this trial showed an intent to move this conspiracy forward with an underlying basis, that underlying basis being a 956 crime, a crime of murdering individuals overseas. And, again, the entire purpose here was to institute a religion; a religion that would rule both in one's personal as well as public.

The point is you cannot have both systems at the same time. If you're going to have this conspiracy, and your point is to implement this belief, this law, then it requires ridding what law exists. It is intended -- it's utter purpose is to attack government.

Here one of the interesting posts by Omar Hassan was a video, a message from the mujahidin to the Americans, highly indicative of his mindset, highly indicative of the charge that was, in fact, supported and of which he was found guilty. And within that video it was -- it was -- it was standard war propaganda. And it's entire attempt, from viewing it, was simply to put fear in the hearts of Americans.

And it was blatantly stating that the IEDs, the improvised explosive devices utilized overseas in areas such as Iraq, such as Afghanistan, were justified. That is a very clear example of Omar Hassan's specific intent in being a part of this conspiracy.

It's stated in the title of the video he posted: "A

Message from the Mujahidin to the Americans."

When he was interviewed by Agent Paul Minella, as we heard testimony, on his arrest, he gave his view of those -- of the conflict in Iraq. His view was that those Iraqis fighting Americans were simply freedom-fighters.

And while I understand the defense's turning to Mr. Hassan's response on that Ross Training video of supporting the troops, that he didn't support terrorism from this, of his definition of terrorism. He considered those mujahidin to be fighting Americans to be freedom fighters.

Overall, this evidence displays a specific intent by this individual that meets the element required for a federal crime of terrorism. His actions are in response to government conduct. His actions are intended to influence government conduct.

I think there are a variety of other matters that additionally display that, such as his statements, his viewpoints that were displayed throughout the Facebook regarding Jews. Again, it goes to a belief system that is intent on overcoming, not only for a religious purposes but for a religious purpose that entails ruling in the public realm.

Based on that, it is our position that regardless of which standard your Honor utilizes, certainly this individual had the specific intent necessary for a terrorism enhancement.

THE COURT: Okay.

MR. BOYCE: May I?

THE COURT: Yes.

MR. BOYCE: A couple of things, your Honor. Number one, it's tough, as a trial lawyer, to decide whether to call your client as a witness. And, as I know the Court is aware, one of the decisions that a defendant makes is whether to testify. We struggled with this decision mightily about whether Omar Hassan should testify. And at the time we made the strategy call that the government's case was so weak against Omar Hassan that we decided not to call him as a witness. That was our recommendation. He accepted that recommendation, and we did not present evidence.

What we have now before the Court the jury didn't have, and that is the notebook that we have submitted to the Court as part of this sentencing process.

Another thing -- I believe this was in front of the magistrate judge at the detention hearing. Before the Court became involved, we had the detention hearing with all the defendants, and then we appealed the detention hearing and we provided the transcript to the Court.

One of the things that Omar Hassan said two-and-a-half years ago -- I think it's in the transcript -- he authorized me to represent to the Court he condemns terrorism. He does not support terrorism, and that is not part of his religious belief. The jury didn't have the benefit of this notebook and Omar Hassan's testimony under oath.

Omar Hassan has now, under oath, submitted that affidavit, which he contends, under the penalty of perjury, is true and accurate. That's new evidence, and we would suggest to the Court it shows the government did not meet it's burden of proving the terrorism enhancement under the *Chandia* case.

Not only does the Court now have Omar Hassan's affidavit, but it also has a number of other documents that the jury didn't see, one being Facebook -- the entire postings of Facebook, not just that little part.

So, as you could see -- and I think some of this came out -- for instance, Omar Hassan had something like 200 friends. They friend him on Facebook. And he had lots of non-Muslim friends that were looking on his web site.

I would suggest to the Court, when you take it as a whole and when you consider some -- not only his affidavit, but these postings on Rosstraining.com, where Mr. Hassan says: "A lot of people are asking me about the Support Our Troops video, with the Arabic on the screen. There is no God but Allah, and Mohammed is his messenger. I am Muslim, and that is what Islam is based upon. The troops I support are ones who fight for truth. Whether it's Arab, American, Spanish, European, whatever, it doesn't matter, as long as he fights for the truth. P.S., I do not support terrorists."

Later in the -- in a later posting he says, -- no, excuse me, an earlier posting, he had said: "Thanks for all the advice, man, and that was probably the best I got so far. I will definitely work on my forms. And thanks for understanding about my views. I don't support terrorists in the Arabic is the main point of it which means there is no God but Allah and Mohammed is his messenger."

The third reference in the postings is: "Sorry if I caused controversy. Islam is a religion of peace, but when attacked will fight back strong. I will edit the video, but will probably keep my religious belief in it because part of my religious faith is to come in strong and healthy shape."

Again, your Honor, I would say to take a 12-point enhancement the Court should consider a higher burden than the preponderance of the evidence. And, again, I think the Court has more information before it than the jury did on the -- to consider whether to apply the terrorism enhancement.

And when we first found the *Chandia* case and we read it over and over, it became abundantly clear to us that the Fourth Circuit got it right. You've got to have the something more. And in this particular case -- I'm not defending Daniel Boyd, Zak Boyd, Dylan Boyd, Sherifi, Subasic, or even Ziyad Yaghi. I'm defending Omar Hassan. And with respect to this particular defendant, the government cannot meet its burden.

So, we would ask the Court to sustain the objection and not apply that enhancement.

THE COURT: All right.

MR. BOYCE: Again, relying heavily on *Chandia*.

THE COURT: Which does, as I understand, those cases stand for the proposition the Court has to be very particular in its findings, very specific, and there must be something more that warrants it. There has to be a particular determination as to motive and intent, that is, that the conduct is calculated to influence or affect the conduct of the government by intimidation or coercion or to retaliate against government conduct.

You've made mention to an affidavit. I'm sure you will argue these are genuine issues of material fact and it's not been subject to cross-examination, but it reads, as I understand Mr. Boyce has summarized it. I've read it myself, as well.

What more do you want to be heard?

MR. KELLHOFER: No, I think your Honor's hit it on the head. It is not new evidence. Rather, it is untested evidence, would be our view. It was not subject to cross-examination. And, in our opinion, the affidavit, itself, displays nothing more -- at least, the one from Mr. Hassan -- nothing more than concrete evidence of an unrepentant individual.

And, in fact, as your Honor just noted briefly a few moments ago, it's almost absurd -- that would be my paraphrase, your Honor -- to believe that Mr. Hassan did not understand the viewpoints of Mr. Anwar al-Awlaki in which he states surprise to find out he was radical in nature. And I think that's direct evidence to show that the very affidavit that Mr. Boyce is turning to is unreliable.

It is our position that the evidence displayed throughout the trial and as highlighted here more than adequately meets the burden here.

The one thing I will note with regard to the legal aspect of it, your Honor, is that *Chandia* is not an example of factual underpinnings either meeting or not meeting the elements. Rather, *Chandia* is --

THE COURT: It's procedural. The judge didn't do it right.

MR. KELLHOFER: It just didn't happen. Yes, your Honor, that's it exactly. And it was sent back to the Court to get it right, to say, hey, you can't just, per se, apply it. You have to have some basis. That's the value of *Chandia*, trying to turn to the factual elements we believe to be of no value.

The point is the Court does have a duty and should appropriately find those specific factors that support the terrorism enhancement, and they should be noted.

THE COURT: Well, this is the only defendant, of all the defendants before the Court, who actually communicated with an individual named Anwar. The importance of Anwar al-Awlaki is particular to Mr. Hassan, who sought solace in his words at a point in time when he was facing prosecution.

I cannot believe that he was not aware of the tendencies of that individual and the fact that that was a particular point of conversation on his first meeting with Daniel Boyd, whose home was filled with weapons and propaganda, you know, underscores, you know, this determination.

I discount the objection to the extent that it's premised on the not guilty verdict as to Count 2. Not to minimize that. It has great significance in this case. But as far as the application of this enhancement, it does not necessarily have a significance.

There is a relationship with Mr. Yaghi that's not as talked about as the relationship with Mr. Boyd that has tangentially Mr. Hassan still connected with Mr. Boyd, where it's Mr. Yaghi who gifts Jude Mohammad, according to the testimony of Daniel Boyd, almost as an offering to someone who's taken great pride in launching young men overseas to engage in jihad. You have an intimate association with an individual, Mr. Yaghi, who actually moves himself in to Mr. Mohammed's apartment when Mr. Mohammed suddenly leaves the country to great celebration as a mujahidin.

There is no doubt that Mr. Hassan had innocent motives in going to Jordan in 2007. But similarly, the Court's compelled to conclude, there were motives as well as trying to find a way to the battlefield and seeking out people who could be of assistance.

So, I think the enhancement is properly made in this case, also with reflection on, in addition to that relationship that's built on a corrupt ideology that hijacks a religion that millions and millions of people practice, that is one that brings great peace and understanding, it's decrying that in some twisted way to fill a void.

And the common ground as between all these defendants is the familial void. Each one of these defendants has had some kind of a falling out with his father and has had a family in great turmoil and great tension.

Also with respect to Mr. Hassan, there is the Ross Training video with the graphics, and a caption alluding to Support Our Troops. There is this attempt to distance himself, as he was subject to online criticism. But that doesn't necessarily compel the Court to conclude that he didn't mean what he said when he posted it.

The defendant maintained that contact with Mr. Yaghi in 2006 when Mr. Yaghi was beginning to find the way, he thought, to the battlefield.

This defendant was trying to offer himself as a fighter, and the Court is compelled to conclude he had the motive and the intent to influence or affect the conduct of the government by intimidation or coercion or retaliate against government conduct, the support of extremism, the support of terrorism, and the attempting to be a part of it on the battlefield, and supporting those who would.

So, regrettably, I'm compelled to conclude, Mr. Boyce, that the 12 points are properly assessed and that your client stands, moving from a criminal history category of III to a VI.

Have I heard all the objections, because I believe I've determined now the advice of the guidelines -- or is there anything else?

MR. BOYCE: We have not gone over role in the offense.

THE COURT: All right. Well, I don't want to preclude that. And, certainly, I've reflected on it in making a determination about the terrorist enhancement. But now moving separate and apart from that, I am not agreeing with you that he's entitled to reduction, but I do consider this when reflecting on the totality of your client's involvement and the influence of Mr. Yaghi on him.

MR. BOYCE: And, your Honor, there is one more. This came in after we had gotten the presentence report.

THE COURT: Okay.

MR. BOYCE: The obstruction of justice enhancement, we would submit to the Court -- and I believe this is in the affidavits of Sonya Zaghloul as well as of Mr. Hassan. Omar was in jail on another charge that was entirely unrelated to this charge. As he sets forth in his affidavit the reason for doing that, he said, I thought people were going to think bad about me and it was the right thing to do. So, that's why he told Sonya to do it. The reason why he was upset and energetic in his voice is because apparently those phone systems cut off. So, he was saying, Sonya, take it down.

I argued to the jury, and I would argue here again, that was the right thing to do. He was -- he realized, entirely unrelated to this, but it related to the state charge -- that he had done something wrong. He didn't need anybody to be thinking anything -- that he might support "Muslim Gangsta for Life."

In his affidavit he says, we were kidding around. It was just a big joke. So, him taking down the posting of the stupid rap, the "Muslim Gansta for Life," is something like some 14-year-old kid -- as he explained in his affidavit, is like some 14-year-old kid had done. It was entirely unrelated to this case.

Please keep in mind this was in 2011 when all this was going on. His trip was in 2007. Four years had passed --

THE COURT: 2011?

MR. BOYCE: I'm sorry, 2009.

THE COURT: Okay.

MR. BOYCE: 2007 was the trip, 2009 was the arrest -- sorry -- in January, and later in the year he was arrested on these charges. But the Court heard some information.

They attempted to get Omar to cooperate before -- right after the trip, and he basically told them, I don't know anything, how can I help you? I don't know anything. That kind of ended it for Omar Hassan.

So, I would suggest to the Court there's in link with that call to Sonya Zaghloul and telling her to take down the "Muslim Gangsta of Life" and obstruction of justice in this case.

THE COURT: Great care was taken in the presentation to the jury to not alert the jury of the custodial status of your client.

I'm recalling that's the same phone conversation where she confirms a communication with Anwar. Is that correct?

MR. BOYCE: I think that's a different conversation.

THE COURT: That was a second taped call.

MR. BOYCE: I think so. And all that was -- where -- and, again, he's asking Awlaki to pray for him, because he thought he was being unfairly prosecuted.

But that, again -- was that the second or the first? May I have one minute, your Honor, and get my facts straight.

THE COURT: All right.

(Pause.)

MR. BOYCE: Your Honor, I'm being corrected here. I think the Anwar al-Awlaki comment was a separate phone call, and it was after the first state charge and not these charges.

THE COURT: Right. Okay.

All right. Does the government want to respond to that?

MR. KELLHOFER: Yes, your Honor. We acknowledge that this is, in our view, a closer call.

THE COURT: Uh-huh.

MR. BOYCE: At least from our view as to the others. Nonetheless, we continue to believe that obstruction of justice enhancement is appropriate here.

What I'm hearing is that's evidence that may be looked at, and so, I decided to get rid of it.

Again, without that even being tested, the point is he was getting rid of evidence.

In this instance, based on the timing, we think it is absolutely appropriate that it apply to this particular charge, this particular case.

If you recall, at the same time Daniel Boyd went to

Yaghi -- or I mean Yaghi -- Hassan was in jail, as well, Daniel Boyd met with him. And the whole point there was based on this stuff, you know, I'm not going to snitch was Yaghi's statement. And all of this evidence that exists, not knowing exactly what it is, relates to this individual, his proclivity towards violence, apparently, and he knew that it would be harmful to him, and was, in fact, getting rid of it.

He was aware that he had reason -- he had reason to be aware that he was being looked at, certainly. He had been questioned on his return from his trip. He had been questioned by Agent Minella. He had been questioned specifically about Daniel Boyd. And, as you heard previously during the trial, that there was quite a hoopla in the community about in entire trip.

THE COURT: Remind me of when he got back from Jordan. Was it in July of 2007?

MR. KELLHOFER: It was staggered between him and Yaghi. I believe it was July or August. I'm not sure of that, but yes, it would have been July or August.

THE COURT: And they came to the store together after that. And then it's the next summer that Yaghi returns with Jude Mohammad and introduces him?

MR. KELLHOFER: Correct. Yes, your Honor.

THE COURT: And then, from the testimony of Daniel Boyd, he was obviously quite awed by the self-possession of

Jude Mohammad, unlike Mr. Hassan and Mr. Yaghi, who, the testimony would show, he felt talked too much and could not be trusted.

But there is this continuing link between them fulfilled by Yaghi, who is obviously still connected with Jude Mohammad at the point in time when he's house-sitting for the Boyds. They come home from the beach, correct, according to the testimony, and find the young man circled with weapons and propaganda materials, who is convinced now he's going to go overseas. This is just a few weeks after that career employee at the community college approached him in the library and said, "I can't wait for you to come back to school," or "Aren't you coming back to school?"

And Mr. Mohammed looked at her and said I'm going to die in the Pakistan mountains?

MR. KELLHOFER: Yes, your Honor, that's correct.

THE COURT: And so, Mr. Yaghi is obviously connected, because he's moved into Mr. Mohammed's apartment right after he leaves the country in October.

And his mother comes over one night and wants to talk about Daniel Boyd, and Mr. Yaghi won't, according to the testimony. And she asks him, "Where is my son?"

And the answer is, "Your son is where I was a year ago."

And so, all of this is going on, you say, and the FBI is investigating this, and they're trying to talk to Mr. Hassan. And don't they try to talk to his father, as well?

MR. KELLHOFER: Yes, your Honor, I believe so.

THE COURT: And both of these young men get involved in this altercation, and it's a terrible mistake, with kidnapping and robbery, and they both end up in jail?

MR. KELLHOFER: Yes.

THE COURT: And so, while they may not be talking to each other, you've got Mr. Yaghi somewhere and Mr. Boyd comes to visit him then and says, don't snitch. Is that the gist of it?

MR. KELLHOFER: That's the gist, yes, your Honor.

THE COURT: And you've got Mr. Hassan making phone calls to Ms. Zaghloul saying destroy this evidence.

MR. KELLHOFER: Correct.

THE COURT: And Ms. Zaghloul knows the FBI is involved with Mr. Hassan, because, in fact, the agent called her by name and she got upset, according to her affidavit, when he had stopped Mr. Hassan. She thought it was her father's work, because he was against the marriage and was following them; is that correct?

MR. KELLHOFER: That is.

THE COURT: But that person was identified to Mr. Hassan -- was identified as Mr. Hassan by Mr. Minella; is that correct?

MR. KELLHOFER: Yes.

THE COURT: Okay. So, all of this, Mr. Boyce, is obviously going on at a point in time when your client wanted some very damaging evidence destroyed. And so, I'm compelled, and I know it's over your objection, to find that that enhancement is properly scored --

MR. BOYCE: Okay.

THE COURT: -- as obstructing justice.

MR. BOYCE: Your Honor, just for the record, taking something down off the Internet is not destroying the evidence. He just told her to take it off and shut it down.

As we have learned through the process of learning about Facebook, Facebook apparently lives on forever. Things like that live on forever. And again, a lot of the information the Court has just repeated relates to activity in 2007. After 2007, all the recitation of facts that the Court just gave relates to Ziyad Yaghi, not to Mr. Hassan.

THE COURT: Well, in 2007 they're friends. In 2008 they're friends. In 2007 they get back from the trip, they go to the Blackstone Market.

MR. BOYCE: Right. And Mr. Boyd said it was a benign conversation, words to that effect, Mr. Hassan was stand-offish, and they had no conversation.

THE COURT: There's some visibility, though.

There's a coming back together. But, obviously, with the consternation of the community, the feelings that Mr. Boyd had that he was being talked about and his efforts were being undermined by this, he did not engage either of these two individuals.

But Mr. Yaghi came back, correct, June of 2008, with Mr. Mohammed. Do I have the time frame wrong? I mean, I'd like to be corrected if I do. But I understand that was the next summer.

MR. KELLHOFER: It is our position that that is correct. It may have been March, rather than June, but right around that summer of '08.

THE COURT: Okay.

MR. BOYCE: But again, your Honor, that's Mr. Yaghi. Mr. Hassan -- there is no direct link between this Jude Mohammed fellow and Ziyad Yaghi's relationship with him and Omar Hassan. And, again, the trip to the Blackstone, there is no direct link that he went to the Blackstone for any purpose other than to look at the grocery store.

His affidavit, which, again, the jury didn't have the benefit of, Omar Hassan's affidavit said I just went with my friend over there. I didn't have any discussion with him. And then I left.

So, I'll sit down now. That's basically all I wanted to say.

THE COURT: Okay. What else is there to decide that bears on the advice of the guidelines?

I believe it is a total offense level of a 43, but I do believe, too, that the adjustment downwards is not as great as the probation officer proclaimed. I believe the adjusted offense level is a 50. I think that was a three-point enhancement that I sustained, wasn't it?

PROBATION OFFICER WASCO: That is correct, your Honor.

THE COURT: All right. So, but it still would be guided by a 43 and capped at the statutory maximum.

So, unless there's something else, Mr. Boyce, I think -- I have decided what the advice is of the guidelines.

MR. BOYCE: Okay.

PROBATION OFFICER WASCO: Your Honor, may I approach?

(Court conferring with Probation Officer Wasco off the record.)

THE COURT: You believe the base offense level should be a 26. Do you still believe that?

MR. BOYCE: Yes, your Honor.

THE COURT: Okay. Do you want to be heard on that, Mr. Kellhofer?

MR. KELLHOFER: We agree with the probation officer's response. We have nothing further to add.

THE COURT: I think it's a little confusing, automatically assuming that the cross-reference at 2M5.3, subsection (c)(2) applies. But ultimately I'm of agreement and conclude that 2X1.1 is the right guideline. And I discount 2N5.3. So, I don't agree that the base offense level is a 26.

But your objection is noted on the record and certainly preserved, as I'll explain shortly the defendant's waived no appeal rights and has all his rights to appeal both the conviction and the sentence.

The Court has to determine a sentence that's sufficient, but not greater than necessary, and I'm free to disregard the advice of the guidelines, as I've just concluded what they are.

I went through the factors, as you know them well, in 18 United States Code, Section 3553, and I reflect on the need to protect the public, to discourage this type of conduct, to promote respect for the law.

And I think about your client's history and characteristics, and I come back to his criminal history that began at the age of 16, and how unsettling that must have been within the family; the drug usage that he has been involved in; and I recognize the tension with respect to this marriage to Ms. Zaghloul, which appears entirely opposed by at least one side of the equation; and how difficult that was that he was trying to find himself.

And I -- I recognize that people in the community saw what was going on, and that there was at least some effort to pull him away.

And I'm we'll aware of his young age. I'm also well aware that he's the only defendant who truly reached out and touched Mr. Al-Awlaki, and that takes some initiative.

But I'd like to know what you think I need to know to fashion a sentence that's sufficient, but not greater than necessary.

MR. BOYCE: Thank you, your Honor. We have filed a sentencing memorandum. We've already touched on a lot of the points the Court has already raised. So, I'm not going to belabor the points we make here.

It is abundantly clear also the type of person that Omar Hassan is viewed in the community. There were over -- I think they were right at 100 character letters that we submitted to the Court that were coming to our office. We finally had to stop them on Friday and say this is enough, we're fine here.

But some of the words that are used to describe Omar Hassan in these 100 letters are pleasant, very social, big smile, kind, loves his family, loves the outdoors, respected his faith, biggest heart ever, amazing work ethic, possesses a lot of love, gentle man, very active in the community, volunteering in the community, moral principles and values, charitable person, helpful, loving heart in everything he did. That's just a few of the comments in the letters that sum up the life of Omar Hassan.

He also, in his affidavit, your Honor, that I ask the Court to take into consideration, his acknowledgement. He was a young, stupid kid saying some dumb things. And in a minute he will get up and again repudiate terrorism.

He has no desire to go back to a life that he was living as a kid. He was trying to move forward. And, as Dr. Kimball, the phrase Dr. Kimball first brought him to our attention -- he's the expert -- you've got his affidavit.

THE COURT: Yes.

MR. BOYCE: -- was a lot of kids come to college seeking their moral compass. They're trying to find a direction in life. And they struggle with a conservative religion like Islam versus the westernized society that Omar was living in and trying to smoke weed, testing it out with his buddies, and things like that. He was conflicted.

And before I forget, I would ask to make the recommendation for the drug program, because I think he could --

THE COURT: I intend to recommend him for the most intensive program available.

MR. BOYCE: Thank you, your Honor.

He thinks that one day, unlike some of the other defendants, he's going to have a life. And one of the goals that he's talked about, he's going out there and telling the kids, don't make the same mistakes on Facebook that I made. Don't say the stupid things in e-mails or even post these things because of the trouble it can get you in.

He will tell you he had no idea that what he did would cause the kind of harm that it's caused for him.

We respectfully disagree with the jury's verdict -- and I'm not going to belabor all of that. But the Court, I believe, can take into consideration other sentences around the country in these kinds of cases. And so that's what I want to focus on now. Because, as I pointed out, the whole purpose of the sentencing guidelines was to remove the disparity in sentences and try to give courts -- try to make courts across the United States sentence defendants in an equal fashion.

And so, we've found some cases with what we believe is conduct akin to that of Omar Hassan, where the charges are very heinous, where the conspirators -- the heads of the conspirators may actually be bad people. But other courts have fashioned appropriate sentences well below even the statutory maximum of 15 years.

We've mentioned Zak and Dylan Boyd in our pleading to the Court, and I believe the -- there is a downward departure and a downward variance issue in this, so I'm going to argue both at the same time. The Court can go downward from --

THE COURT: What's the guideline that you're resting the downward departure on?

MR. BOYCE: I'm sorry?

THE COURT: What's the guideline that you're resting the downward departure on? What number? Do you have a number? Is this really under 3553?

MR. BOYCE: It's mainly under 3553.

THE COURT: Okay.

MR. BOYCE: I'd just point out to the Court that the downward departure can be considered under -- I don't have the number in front of me. It's in my memo.

THE COURT: Okay.

MR. BOYCE: -- but there's also the variance issue. So, here are the three cases that we're talking about. The first one -- and I'll hand up some documents to the Court when I'm through, your Honor, and I've got copies for the government.

THE COURT: Okay.

MR. BOYCE: This first case, and I've got it labeled as D1 -- this is *U.S. v. Burson Augustin*. These details came from the government's sentencing memorandum, and we've got the docket entries and the judgments of where they can be found. Here's the conduct of the conspiracy in that case. Would you want me to go ahead and hand this up --

THE COURT: Why don't you summarize it, and I'd welcome you to --

MR. BOYCE: Okay. The conduct of the conspiracy in this case was recording of the defendants -- it's plural -- taking an oath of loyalty to Al-Qaida, photographs and video footage taken by defendants of the FBI building and federal buildings in North Miami, a list of materials needed, such as weapons, vehicles and cash.

Codefendants formed and trained as an army of soldiers to wage war military style in cult-like organization. Ringleader of the group sought the assistance of a foreign terrorist organization, a man convicted of terrorism in the 1980s.

Ringleader met with person he believed to be a representative of Al-Qaida and told the guy his mission was to build his own army for "full ground war, just as good or greater than 9/11." Witnessed a fictitious plan to conduct coordinated attacks against FBI buildings in five cities, including the FBI building in North Miami Beach.

Now, that's the conduct of the conspiracy that was prosecuted. And then you go through the particular conduct specific to this defendant, Burson Augustin.

He met with the informant and discussed the defendants' plan to engage in coordinated attacks in different areas around Miami with an ultimate goal of not just taking over Miami, taking over Allah's world with his help; to participate in taking the informants against their will to meet with the ringleader; to determine if the informant was working for the government. He provided pictures they took of the federal building to the informant and discussed the Al-Qaida plan. He told the informant to hide their secret mission from the authorities. And he was present and stood guard for the ringleader during several meetings with the informant.

He proceeded to trial. He was convicted under 2339B and 2339A. He was acquitted on the conspiracy to destroy by means of explosives property used in interstate and foreign commerce.

And in that case, again, the government would -- his guideline sentence was 360 months' imprisonment, with a statutory maximum at 30 years' imprisonment, and the PSR did contain the terrorism enhancement.

However, the judgment was 72 months as to Counts 1 and 2, and they were to run concurrently.

We've got -- may I hand that to the Court?

THE COURT: Uh-huh.

MR. BOYCE: And I'm handing to the government Defense Exhibit 1, as well as the government's sentencing memorandum.

THE COURT: Okay.

MR. BOYCE: We have summarized the case on the first page, just to make it easier, and then supported it with the various pleadings.

THE COURT: Okay. This is a Southern District of Florida case you cited as 10620373?

MR. BOYCE: Correct, your Honor.

THE COURT: Is that --

MR. BOYCE: I think that's the overall case.

THE COURT: Okay.

MR. BOYCE: We also looked at some other -- there are three other cases, and I'm not going to read them, but we've done the same thing with this case. We've summarized the three different defendants in that case and the sentences they received. And, essentially, there is a *U.S. v. al-Furqan el-Haqq* that we have labeled as Exhibit E, and in that case the defendant was convicted of -- pled guilty to one count of conspiracy to provide material support for a foreign terrorist organization. His guideline range there was 57 do 71 months, and he got 50 months' imprisonment. That is Exhibit E.

And then exhibit -- okay, all three codefendants are in that case. There is another codefendant in that case that got 40 months. And then there is a third defendant in that case who got 36 months.

May I approach again with those?

THE COURT: Uh-huh.

MR. BOYCE: My point is this, your Honor. We all thought that the sentencing guidelines remained in force for years and years, and then *Booker* changed all that and changed it so that the Court could do the appropriate thing.

This has been a highly, highly unusual case, and I believe the Court has recognized that by the sentencing the Court gave to the other two defendants, Dylan Boyd and Zak Boyd.

THE COURT: I don't want to put them in the same cart, you know, as your argument proceeds because those two individuals did plead guilty, they did assist the government, and I did have the chance to observe them under tested cross-examination. And the government did make a motion, which gave the Court the vehicle to consider a sentence below the statutory minimum.

MR. BOYCE: Understood.

THE COURT: I don't dispute your comment that it's an unusual case, but I think I can say that with respect to each one of these cases around the country. They're highly unique, highly individualized, very different from your felon in possession of a firearm. And so, therefore, your argument is resonating with me as to what other judges have done, but there is significant distinction between all of these cases which really requires the trial judge to give a very individualized approach in sentencing.

And that's specific in these guidelines that we've been talking about, when we have to find motive and intent and decide something beyond a reasonable doubt or by clear and convincing evidence. I mean, these are very unique cases.

MR. BOYCE: I agree, your Honor, and you just hit the nail on the head as far as our entire argument is concerned. You can't look to the sins of all the other codefendants. You've got to look at Omar Hassan.

Did he target a specific individual to go kill? No.

Did he set something up where he was doing something so focused that he should be severely punished?

Was a single hair on the head of a single person touched by Omar Hassan in this overall conspiracy that apparently lasted for five years? No.

Was he still participating when Daniel Boyd, by his own acknowledgement was spiraling downward and getting worse and worse?

What this young man did was foolish and immature discussion, and, while he was trying to find his moral compass, said and did some things he should not have done.

He acknowledges the jury has found him guilty. He should be punished for that. But he is hopeful that the Court can take into consideration this notebook of all the new information that the jury didn't have in fashioning an appropriate sentence.

And, as the Court has already said, the purpose is not to punish too severely, but to give just enough punishment, but not too much.

So, again, with all due respect to Mr. Yaghi, with all due respect to my colleagues who are arguing later in the day, Omar Hassan is the most unique of these defendants in this case because of his real lack of involvement.

And we would request the Court consider these other cases, consider the uniqueness of Omar Hassan as compared to Ziyad Yaghi, as compared to Sherifi, Subasic and the Boyds, and consider the 50- to 70-month range; something where he's been punished, where the message has been sent to other children of this nation.

Omar is a citizen. He's not going anywhere. He loves this country. He's about to denounce again terrorism. Give him an opportunity to go out in the community and tell these kids think before you post, think before you say, think before you associate with people who may have more murderous or bad intent than you really have.

Mr. Hassan has said that he does care to address the Court, and he would like this opportunity.

THE COURT: I'll certainly want to hear from you, as is your right. But let me ask the government, to the extent we have a motion for a variance or arguments as to a particular sentence, now is your time, Mr. Kellhofer. Are you ready? Do you want to be heard further?

MR. KELLHOFER: Specific as to a motion on the variance, we have nothing to add, your Honor.

THE COURT: Why don't you -- can you wind everything up into what the government's argument would be if you would like to suggest a particular sentence?

MR. KELLHOFER: Yes, your Honor.

THE COURT: And why you suggest that?

MR. KELLHOFER: Yes, your Honor.

Taking all of that up, I first would note that the government doesn't have much response to the cases just provided, that were just received. Although we would note very much as you mentioned with regard to the Boyds' guilty pleads being very, very different, three of these four cases are guilty plea situations.

As to the fourth one, sparse on the facts and difficult to utilize to be of any assistance would be our opinion of them. Certainly, there are likely cases out there with very much higher sentences, and we think that would be equally appropriate to try and bring those in and dispute that that would be the appropriate right route.

These are highly individualistic cases. Specific to this case, the first what I think is absolutely worth noting, simply due to the presentation by Mr. Hassan, is -- everything points towards completely unrepentant.

The search for a moral compass, the statements of, well, one day he'll be able to say don't go on Facebook and say silly things.

It is a complete lack of recognition of the import of the crime committed.

To be very clear, Mr. Hassan has been convicted. He was provided excellent services, as was evidenced throughout the last few years, by his counsel. The evidence was a highly tested, extremely litigated case over a few weeks. Twelve members, citizens, unanimously decided beyond a reasonable doubt that he was guilty of this offense.

It's almost difficult, as a litigator and as someone quite steeped in the facts of this case, not to want to bite off and want to go in and argue all of these affidavits or statements that have been presented; but the fact of the matter is it would be inappropriate and it is not what this hearing is about, because at this time this individual is convicted of this crime, and he does not seem to fully grasp that. So I would start with, we believe that to be of high value.

The searching of a moral compass is not deciding should I go this school or should I go to that school, finding himself. This is a little different. This is an individual who determined that he would be a member of a conspiracy whose goal was to provide support, and that support was to further killing people. That is what he is convicted of. Losing sight of that would be an injustice. That is a determination he made.

And we do fully recognize, as the Court has pointed out, that all of these individuals -- and this one as well -- did have family issues and were attempting to fill a void. But I would also note that there was evidence -- there was testimony from individuals who had the same problem.

I would only point to Holden Eliason, who pointed out that at a young age, when he showed up with his single mother and met with Jude and met with Daniel Boyd, he recognized that was wrong. And he had almost pulled him in. He said, according to him, he was trying to find his way. He was. He was trying to find his way in the belief that he held as a Muslim. And he stands in stark contrast to what this individual decided.

The evidence displayed an individual who didn't make silly statements, wasn't being goofy, but who repeatedly, over time, held to a tenet -- held to a very dangerous belief. He embraced it. He embraced the beliefs of Anwar al-Awlaki and other individuals. And it's a shame those materials exist. This was an individual who made a decision, a grown up decision; one that entailed believing that "smoking a Jew like a cigi" is a laudable thing.

Those are communications that occurred between him and his friends, his coconspirators. They hold sentiments that if he were in charge, he'd "merk," or kill all Americanized Muslims.

And this is a conspiracy crime, and conspiracy, in and of itself, is a crime for a reason, because people are more likely to do things in groups, and they feed off of each other, and that very much existed here.

His actions, his beliefs, his encouragement to Ziyad Yaghi while Ziyad Yaghi was over in Jordan attempting to further this conspiracy, attempting to meet up with what he considered to be mujahidin so that he could fight.

All of these are effects from a conspiracy. These are effects from this conspiracy. These are effects from Mr. Hassan's conduct and agreement in this conspiracy.

There were other individuals that showed a very stark contrast, such as Jamar Carter, who testified that the beliefs that Omar Hassan had were red flags to him, caused him to break relations. He was concerned over the praise for videos depicting car bombings that Omar Hassan had.

The relationship and the seeming adoration that Mr. Hassan had towards Anwar al-Awlaki is chilling. The works that were passed amongst them that were praised included such things as the Book of Jihad, Constance on the Path, and 44 Ways to Support Jihad. And, as we heard and as was evident from the testimony particularly from Mr. Kohlmann, Anwar al-Awlaki has been a radical individual since 2003.

Proclaiming these views, pushing these views, acting on these views is harmful. Extremely harmful. It's harmful to the Muslim community; it's harmful to the greater American community; it's harmful to the international community.

I mentioned previously that the video posted by Mr. Hassan, the "Message from the Mujahidin to Americans," that is how steeped Mr. Hassan was in this view, such to the point of upholding the values propagated by that video, that the improvised explosive device that common knowledge tells us has harmed hundreds of Americans fighting in Afghanistan, fighting in Iraq, that those are justified actions. Propagating that is something that's despicable.

All of that culminated, in the government's view, with Omar traveling in 2007 with his buddy in order to further this cause.

And, as I stated previously, when he was questioned by Agent Minella, his view is that the Iraqis fighting against the Americans were simply freedom-fighters.

When in jail, he did, in fact, have communication and reach out specifically to Anwar al-Awlaki. This is all highly indicative of where this individual is in his mindset. And he was charged in a conspiracy for that.

And I would ask that this Court take great view of the harms that exist by virtue of a conspiracy, and the ones that occurred here. All of the individuals fed off of each other. It is a rock, pushed, it rolls, it speeds up, it gathers speed, and it does result in great harm. Harm, as we heard, existed, according to Ms. Elena Mohammad, greatly. Her son had left.

Is that the responsibility of Omar Hassan? Yes, it is. Omar Hassan, who fully supported and worked with Yaghi. Yaghi, who brought Jude; Jude, who, then met with Daniel. Jude, who then traveled with the view of dying in Afghanistan. Yes, absolutely. There was great harm caused by the actions and beliefs of Mr. Omar Hassan.

It is our view that the 15-year cap of this offense is fortunate for Omar Hassan, and that a 15-year sentence is most appropriate.

Claiming that not one harm -- not one strand of hair was harmed is ridiculous. That would be a different charge.

It's not a question of what are the things he didn't do. It's a question of what did he do, and what is the appropriate punishment. And, in this case, it's our view that the 15-year maximum sentence allowed is, in fact, appropriate.

Thank you.

THE COURT: Okay.

MR. BOYCE: Your Honor, Mr. Hassan would like to speak, but I would be remiss without asking the Court to acknowledge -- I know you have three defendants today. Could

I ask those who are here on behalf of Mr. Hassan to just stand.

THE COURT: Yes, certainly.

MR. BOYCE: The people from Raleigh who are here on behalf of Mr. Hassan, would you please just stand?

(Several spectators standing.)

THE COURT: Okay. Let the record reflect a substantial number of people in the room have stood.

Thank you.

MR. BOYCE: Thank you, your Honor. There are also people outside who were allowed in the courtroom.

THE COURT: We do have limited seating.

All right, Mr. Hassan, what would you have the Court know?

DEFENDANT HASSAN: Thank you, Judge. First of all, I want to start off by thanking Allah, God, for, without him, I would not have been able to get through this. And he has let me learn a whole lot from this experience. And he put peace in my heart.

For the past two-and-a-half years I've been in jail. And most of it has been in a cell. In fact, for the past four months they've put me on solitary confinement. And although it is some tough time, it did give me a good chance to think deep and reflect on many things.

I've thought of my life, thought of things I've done, things I regret, who I am, and what I want to become.

Of course, I thought what in the world did I do to deserve this. I was 19 years old when I met Daniel Boyd, and I had no clue that just by associating with him, just by taking a trip with him, that I would end up like this.

I will admit, I did make mistakes in my life. I did say some dumb things; did some dumb things; I did get a misdemeanor here and there; and, I did post some highly inflammatory comments on the Internet. Yes, I admit to this. But I am no terrorist.

And even though I did some dumb things, I was also doing good things. I was going to school at NC State University, maintained my 3.0 GPA. I was working a lot. I worked at UPS. Worked with my dad in the car business. And I worked as a soccer referee for kids at the Capital Area Soccer League. I was also going to the IAR. I was participating in the programs. And I eventually became a youth counselor there. And as Mr. Boyce said, I was finding my own moral compass.

When the FBI approached me in 2007 and kept asking me about Mr. Boyd, I realized to not associate with him again. And that's exactly what I did.

Now, I want to speak briefly about my beliefs.

I am Muslim. I'm proud to be a Muslim. And Islamic faith calls for peace and justice for all humanity, whether you're Muslim, Christian or Jewish. And a verse in the Qur'an says whoever kills somebody -- whoever kills a soul, it is as if you had killed mankind entirely. And if you -- whoever saves one, it is as if you have saved mankind entirely.

Another verse says there shall be no compulsion in the acceptance of religion.

Those are just two quick examples of many in the Holy Qur'an that promote peace and justice. And Islam teaches us to be the best example, to be the best in manners, to be the most honest, to control our anger, to love others as you love yourself, to enjoy good and forbid evil. This is what my religion preaches and this is what I believe in.

My religion doesn't preach the killing of others for any race or religion, whether they're Muslim, Christian, Jewish, White, Black, Spanish, American, Iraqi. We're all human. We need to coexist.

One second.

(Pause.)

Yes, we're all human and we need to coexist.

Now, I do know I did post some very stupid and inappropriate things on the Internet, especially the rap posts. I swear those things had no truth behind it. I was 19 years old when I posted it, and I was just goofing off joking, and I meant no harm by it.

And, looking back on it now, I see how silly and dumb I was, and I really do regret it. I regret posting these things, and I apologize for it. And I apologize for all the dumb actions that I've done. I know those things are very offensive and obnoxious.

These past two-and-a-half years I've become much more mature and much wiser, and I will truly say that I have learned from my previous mistakes.

I understand the jury found me guilty for Count 1 and not can guilty for Count 2. And I appreciate the not guilty verdict for Count 2. But I strongly and respectfully disagree with the guilty verdict of Count 1. I never ever conspired with anybody to provide material support to terrorists. And that's the truth. And there's not a single person in this world that has interacted with me or known me that thinks I'm a terrorist. And, in fact, even those who testified against me in the trial, every single person, nobody said that they thought I was a threat of any kind.

And just to say -- I want to say that even the jails that I've been in since the arrest on these charges I've had officers come to me, actually even here in the New Bern jail, they'd come up to me and they'd say, man, I hope you beat this case, because you do not seem like a terrorist at all.

I'm not saying this to praise myself, or anything. I just want the Court to consider that there's much more to me than what the government portrayed of me. And although the government claims I'm a terrorist, I want to say it again loud and clear, I am not a terrorist and I condemn terrorism. I emphatically reject any form of terrorism, whether it is domestic or international. I reject any action against innocent people anywhere in the world. And having seen things for the past two-and-a-half years, I've become stronger in my opposition to terrorism.

I wanted to briefly touch on the Anwar al-Awlaki thing. If somebody wants to believe -- I did not know he was a radical or a terrorist at that time. I'm -- I really did not know. I used to be a big fan of him. He used to have good lectures on stories of prophets and different -- he's a very good speaker. So, I became pretty much of a fan -- I became a good fan of him.

When I found out he had a web site, I became excited. And when he posted an article, it was the first time I had seen something of that sort, and I quickly -- or spontaneously, I would say, just e-mailed him. I did not think I was doing anything illegal at the time. And I only learned that he was a terrorist after I was arrested on these charges, when my attorneys would come and they would tell me about it.

And, to clarify, the *44 Ways to Support Jihad* article was not published until 2009. So, when me -- whenever we went to Daniel Boyd's house, we did not discuss that article, because I was at his house in 2007.

Anyway, to be completely honest, I was very shocked when the verdict came back as guilty. To me, I felt that the evidence clearly exonerated me, and I felt that the truth became clear.

And I'm saying this because, since I have been found guilty, I understand that you have to impose a sentence on me. I really hope that you take this into consideration. Please take into consideration the trial testimony, the exhibits presented, the affidavits, and also the character letters.

When I'm released, I plan to do good things. I plan to go back to school and continue my education. I plan to get married and have children. I plan to work and just live a normal life. And I also intend to go back to the community. And I want to speak to the youth about what I've learned from my experience. I want to speak to them about guilt by association, who to choose as mentors and friends, how to stay away from radical ideology, and how posting stupid and inappropriate things on the Internet can get you in big trouble and ruin your life.

I ask the Court to please help me put this whole ordeal behind me and to give me a chance -- a chance to become a productive member of society in the United States.

Before I finish, I must thank the Court for allowing to have Mr. Daniel Boyce as my attorney. I think, when it comes to having a lawyer, it does not get better than Mr. Boyce. He has been honest with me 100% since day one, has worked extremely, extremely hard on this case, and has defended me zealously and from his heart.

I'm also very thankful for having Ms. Brenna Hartley and Mr. Michael McKinnon -- I'm not sure if he's here along with the defense team -- who, for if past two-and-a-half years, I have met in preparation for this case, who have met me on a regular bases, have done more than I can even ask. And it's been a wonderful experience in working with them, and I'm very, very grateful for it.

I also must thank my family, especially my dad and my mom, whom I've always had a good relationship with them. My dad has always been a good father, my mom has always been a good mother. I love them very much. Also my two sisters, Sarra and Hajar. All of them have supported me 100%. I know this has been very tough on them. I'm very sorry for the trouble I've brought to them, and I want to thank them very, very much.

Also, I want to thank friends and members of the community who have supported me. I do appreciate it.

And I want to thank you, Judge Flanagan, for your time and your patience, for compassion and understanding of what we've gone through.

Thank you.

THE COURT: Have I heard from all sides fully now?
MR. KELLHOFER: Yes, your Honor.
MR. BOYCE: Yes, your Honor.
THE COURT: All right.
(Pause.)
All right, I'm ready to sentence the defendant.
Except as I've noted on the record, I accept the findings in the presentence report and I deem them credible and reliable.
At the start of the sentencing hearing the Court constructed a vehicle by which several matters would be included as a part of the presentence report, those being the letters of the defendant's counsel dated December 28th of last year and January 5th of this year, and the probation office will attach those to the presentence report that will go in to the Bureau of Prisons and inform concerning you.
I said at the start that I did intend to recommend the most intensive drug-treatment program that can be made available, and I do. If you're accepted into that program and fulfill it's requirements, it's possible that you can take some time off your sentence. Regardless, if you're not eligible for that credit, you need to put the use of marijuana behind you to go forward.
Now, I've considered the advice of the guidelines and the factors set forth in 18 United States Code, Section 3553.

And I would note that you willingly became a part of the Internet terrorist propaganda machine that is a great canker in this world and contributed to their hateful speech in a way that your ideas could be very immediately disseminated. And you're adherent of someone who is a leader for a significant period of time in that effort to indoctrinate and persuade and promote.

And you stand here having been in contact with the criminal justice system from the age of 16 until your arrest. So, over one-quarter of your life you have been in contact with law enforcement, and, more than any other defendant, should understand the consequences of your actions and that punishment would be a necessary result to a defendant who was found guilty.

Regrettably, it seems to have emboldened you, and opportunities you had to be dissuaded from your involvement not only with Daniel Boyd, but with situation Ziyad Yaghi and that whole platform that was at work in and around Wake County endeavored to promote this radical ideology and send people overseas to support it.

You had more efforts than many -- more opportunity than anyone else were attributed to you to try to dissuade you. And that gives the Court concern about the propensities that you've demonstrated, this disregard for the law, this lack of respect for the law.

Your criminal record shows a demonstrated disregard for the property rights of others, as well as the safety of others, with the propensities that you've shown and acted on to commit violence and harm, including to those you would claim are very special to you.

So, while very young, over a quarter of your life you had this -- these experiences. And filling this void created -- however it was created -- you were prey to and a proponent of something that was incredibly harmful and destructive. And for that you find yourself here to be sentenced, providing support to terrorists.

You are, indeed, very fortunate as to the not guilty verdict with respect to the second count.

I am not compelled in this case to conclude whether the advice of the guidelines beyond the statutory maximum create or accomplish the purposes of sentencing, so I reflect on the statutory maximum. And I am compelled to conclude that that is the appropriate sentence in this case. That is a sentence that's sufficient, but not greater than necessary. That's a sentence that can protect the public, discourage this type of conduct, promote respect for the law, and provide any needed treatment or care.

So, pursuant to the Sentencing Reform Act of 1984, Mr. Hassan is committed to the custody of the Bureau of Prisons to be imprisoned for a term of 180 months.

Now, you will have a life afterwards, Mr. Hassan, and you have plans for it. You can get out of prison sooner by your good conduct in prison. You'll get credit for time served.

You'll be supervised for three years when you get out of prison, and if you break any law, if you possess a weapon or drugs illegally, you will be in violation of the judgment, and that could cause you to go back to prison.

Now, there are some other standard conditions and some special ones. In addition to recommending you, though, for that intensive drug-treatment program -- you're a very smart man -- I'm going to recommend you for further education.

Take advantage of any opportunity in prison and get that moral compass straight, so that when you get out you're following it.

And then you'll be supervised for three years. You'll participate in a program approved by the probation office for the treatment of addiction or dependency.

You'll provide information to your probation officer about your efforts to get a job and keep a job.

And you'll have to consent to warrantless searches during that period of time to make sure you're compliant.

And you're going to have to cooperate in the collection of DNA.

There's a $100 special assessment, which is due immediately.

There's no restitution at issue in this case.

I've reviewed your financial circumstances, and I don't think that you have the ability to pay a fine within the guideline range. I'm going to impose a fine of $5,000. That's a fine that you should be able to pay and satisfy before your release from prison through your efforts in prison. The fine, however, by law, is due immediately.

I'm going to advise you in a moment of your appeal rights; but, before I do so, without waiving any objection, are there any other requests, Mr. Boyce, for particular placement or any programs, or anything that bears on this part of the sentence that you would ask me to think about?

MR. BOYCE: May I have one minute with my client?

THE COURT: Yes.

(Pause.

MR. BOYCE: Your Honor, we assume that the family will continue to live in Wake County. There are no plans for them to move elsewhere. So, we would ask the Court to recommend a designation as close to his family as possible.

THE COURT: I'll recommend Butner, and with the hope that the Bureau of Prisons will consider placing you there.

And, for the government, are there any matters that haven't been considered on the record?

MR. KELLHOFER: No, your Honor.

THE COURT: And, Mr. Wasco, from the probation office?

PROBATION OFFICER WASCO: No, your Honor. Thank you.

THE COURT: Okay.

Now, Mr. Hassan, I want to turn my attention and yours to what your appeal rights are. And, Mr. Boyce, I'm anticipating you're going to order a copy of that transcript, the trial transcript? I'm not sure about the processes of this, but I would ask that the trial transcript be ordered as quickly as possible to promote the resolution of all matters, and I know that you'll need it for purposes of your appeal.

MR. BOYCE: I don't know if I'll still be on the appeal, but we'll go ahead and get that process rolling. I think some of the other defendants are planning on doing the same thing.

Thank you, your Honor.

THE COURT: All right. And as you're mindful of, upon your filing of a notice of appeal, your service is concluded in the ordinary course.

MR. BOYCE: Thank you, your Honor.

THE COURT: But I'll leave that up to others to finally decide.

I would note, too, you have been aided and assisted by distinguished counsel who has worked very hard for you, and I have a special window into your case, as the others, by virtue of the procedures the Court's put in place to provide for regular compensation, which is very important in a case like this. And so, I can say from that window, too, as well as the Court's objects that are a matter of record, that you have received very diligent service, and you recognize that, too, and I think that's worthwhile to note.

MR. BOYCE: Thank you, your Honor.

THE COURT: People have confidence in you, they're here to support you, and you have some very strong qualities that I think that if you are able to go forward and become a productive member of society, that there are contributions that you will be able to make.

Now I turn my attention and yours to your appeal rights. You can appeal if you believe there is something very wrong with your conviction or with the sentence. You have a statutory right to appeal if you think it goes against law.

Now, you haven't waived any of those rights. They're all accruing to you. But there's a time frame in which you have to exercise them, and it's usually 14 days, with no exception, or very limited ones -- 14 days from the day that judgment goes on the docket. That is the deadline for a defendant to appeal. Mr. Boyce will talk to you more about that, I'm confident.

If you can't afford the cost of an appeal, you can apply for permission to appeal for free. And, if you request, Ms. Rudd will prepare and file the appeal paperwork for you.

Does your client have any questions about the judgment or about his appeal rights?

(Pause.)

DEFENDANT HASSAN: I just want to say that I don't understand how 15 years -- do I deserve that?

THE COURT: Yes.

DEFENDANT HASSAN: What did I do?

THE COURT: It's a matter of record.

I'll put the defendant back in the custody of the Marshals Service, and we'll take an hour's recess and reconvene with Mr. Sherifi at quarter of 1.

MR. BOYCE: Thank you, your Honor.

(Defendant Hassan withdrew from the courtroom.)

(Luncheon recess.)

(In open court following the luncheon recess. No defendants are present.)

THE COURT: Good afternoon, Mr. McAfee.

MR. McAFEE: Good afternoon, your Honor.

THE COURT: Let's invite Mr. Sherifi in.

And who for the government will be heard in this case?

MR. BOWLER: I will, your Honor.

(Defendant Sherifi entered the courtroom.)

THE COURT: Mr. McAfee, in the case of the United States of America versus Hysen Sherifi, have you had enough time to prepare for sentencing? I recognize you had some unforeseen issues that resulted in a late filing. I've read the material. Are you ready to go forward?

MR. McAFEE: Yes, your Honor.

THE COURT: Okay. Mr. Sherifi, likewise, the probation office has prepared a report about you. Have you had enough time to read it?

DEFENDANT SHERIFI: Yes.

THE COURT: Are you ready for sentencing today?

DEFENDANT SHERIFI: Yes.

THE COURT: All right. Thank you.

The jury returned guilty verdicts on all counts charged by the government. In your case, that is a conviction as to Count 1, conspiring to provide material support to terrorists; Count 2, conspiring to murder, kidnap, maim and injure people in a foreign country; Count 4, possessing a firearm in furtherance of a crime of violence; Count 8 is the same; and Count 11 is conspiring to kill a federal officer or employee.

I want to start by informing the defendant of how the sentencing hearing will proceed and give you a forecast of the course of this hearing today.

The Court must fashion a sentence that's sufficient, but not greater than necessary, that considers the advice of the guidelines and accomplishes the statutory goals of sentencing. The law requires that the Court begin the decision by correctly calculating your advisory guideline sentence.

The sentencing guidelines, as I'm sure Mr. McAfee has explained to you, is a tool implemented by Congress to suggest an appropriate sentence based primarily on the severity of the offense conduct, as well as the defendant's previous criminal history. I may accept any undisputed portion of the report as a finding of fact in establishing the guideline range.

And there are certainly some objections to be heard. If you have objected, as is clear, to any part of this report, I will resolve those objections before determining the guideline range. And, in this case, given the nature of some of the objections, it will be necessary for the Court to order its decisions in a certain way.

The burden is on the government to prove the facts underlying the enhancement by a preponderance of the evidence, in some instances, by clear and convincing evidence in others, and beyond a reasonable doubt with respect to others. The burden is on the defendant to show any downward adjustment is warranted by a preponderance of the evidence.

Now, the guidelines are advisory. They're not mandatory, as they were years ago; but the Court is required to consider their advice.

Now, I have substantial discretion to impose a sentence above or below the guideline range if I feel the sentence is necessary to accomplish the goals of sentencing. I'm not even going to assume, under current law, that the guideline range calculated in this case is a reasonable one.

After I have calculated your advisory sentence, I must allow both sides the opportunity to argue for whatever sentence they feel is appropriate; and I'll hear at some length from Mr. McAfee and from Mr. Bowler.

Under 18 United States Code, Section 3553, I'll base the Court's sentencing decision on the nature and circumstances and seriousness of the offense, your background and history, the need for the sentence to promote respect for the law, to discourage this type of conduct, to protect the public, and to provide any needed treatment or care in the most effective manner possible.

I will give you the chance, before imposing the sentence finally, also to be heard, Mr. Sherifi.

And then I'll fashion a sentence based on an individualized assessment of those factors found at 18 United States Code, Section 3553, and the information in this case that has been received. And I must explain why I've chosen a particular sentence, and I will do so.

Mr. McAfee, does your client have any questions about the sentencing process before we go forward?

MR. McAFEE: No, your Honor.

THE COURT: Okay. Do you wish to suggest -- I think you were here in the courtroom in the morning session. Do you wish to suggest any particular order that the Court take up your client's objections?

MR. McAFEE: Your Honor, I can inform the Court that as to objections 1, 2, 3 and 4, I'm not going to ask to be heard any further on those matters. Those were primarily made to preserve our pretrial position and some trial objections. The substantive --

THE COURT: I hate to interrupt you, but let me make sure my numbers match yours and I am conversant on what you are not opposing.

MR. McAFEE: Yes, your Honor.

THE COURT: Or not wishing to be heard further on.

So, you say 1 through 4?

MR. McAFEE: 1 through 4, your Honor. 1 through 3 are labeled in my copy as factual, and number 4 is factual and legal.

THE COURT: Okay.

MR. McAFEE: As to 5, 6 and 7, which are the legal and guidelines applications, those are the three objections which I raise which are consistent across all three defendants, and I think the government has to make a showing in support of those.

THE COURT: And I have received in your case the motion for a variance, and reviewed that, as well.

As to these factual objections, the defendant does not wish to be heard further concerning the purpose of his travel to Kosovo; that he misled a philanthropist into giving him $15,000; that he and Mr. Boyd discussed a plan to attack the Marine Corps base at Quantico; and the summary of the offense conduct.

I recognize each side will argue the inferences of the facts that have been established, but I don't find any reason to overturn these factual findings. So, I'll move very swiftly now to your objections that are numbered 5 through 7.

And the first one involves 3A1.1(a), which the Court must decide beyond a reasonable doubt the propriety of this objection. Is that where you want to start?

MR. McAFEE: If the Court please, yes.

THE COURT: All right. All defendants have objected to this enhancement for intentionally selecting any victim or property because of the actual or perceived race, color, religion, national origin or ethnicity. This provision of the guidelines provides that if the Court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction, because of the actual perceived race, color, religion, origin, ethnicity, gender, identities, and the other provisions, then the offense level should be increased by three.

Now, in this report the probation office has gone into some detail not only about your response to its determination that that enhancement applies, but I should note for the record the detail that it provides concerning the related cases, the codefendants. I've overruled the objection concerning the presentation as to the offense conduct.

Certainly, without waiving the defendant's right -- or disregarding his right to argue the implications here, the probation office has gone through the whole course, including making mention that the defendant in this case contacted Bajram Asllani. This is the only defendant that the Court's aware -- well, to be sentenced today that has had any contact with Mr. Asllani.

The defendant's criminal history is minimal. He has no scoreable history. If the terrorist enhancement is correct in this case, it moves from a zero to a 6.

The family background is given to me. It is clear that there was a very difficult childhood that your client endured during the war, dodging bullets, trying to make money for his family selling trinkets and cigarettes, and then finding himself in a refugee camp with a great deal of responsibility on his young shoulders. And then coming into this country eventually and that really didn't turn out to be, at least in

North Carolina, what he thought it was going to be.

The record supports that the family bettered itself here. It also reflects some instability in the family unit -- issues among the children and the parents, issues as between this defendant and his sisters, and a difficult time trying to develop attachments among peers in the community.

I've reviewed all of this, and that reflects on his education at Broughten until his senior year, when the defendant's family obtained the ability to own a house, and he transferred to another high school. I'm aware that he's made some effort to get further education. And he has a work history, that's clear.

The base offense level, the probation office believes, is a 33. This gets to the objection that's at issue here in paragraph 55, which adds three points.

The other objections which are going to be challenged add another 15 points total, and result in an adjusted offense level of a 51. However, under the guidelines, the offense is not to be treated as higher than 43. So, the total offense level in this case, the probation office reports on page 17, is a 43.

Given the convictions of record and the high criminal history and the total offense level, the advice of the guidelines is as follows:

On Count 1, the defendant faces with respect to the crime of conspiring to provide material support to terrorists not more than 15 years in prison. The advice is 180 months. Were it not for the statutory cap, the advice that I would be reading from this page would say life.

Counts 2 and 11, Count 2 being conspiracy to murder, kidnap, maim and injure people in a foreign country, and Count 11, conspiring to kill a federal officer or employee, those carry mandatory -- rather, maximum terms of incarceration of life as to each. The advice of the guidelines is life.

Count 4 carries with it with respect to the crime of possession of a firearm in furtherance of a crime of violence, a punishment of not less than five years nor more than life, which must be consecutive to any other term of imprisonment imposed. Therefore, the advice of the guidelines is 60 months.

Count 8 carries with it a penalty of not less than 25 years or more than life, consecutive.

So, the defendant faces some very serious consecutive sentences totaling 360 months; 180 months on Count 1 and the advice on Counts 2 and 11 of life imprisonment.

So, now let me turn back to this objection number 3. The defendant is arguing that there were no identifiable victims in this case. And what else would you wish the Court to consider?

MR. McAFEE: Your Honor, just simply pointing out the inconsistency that the presentence report says there's no identifiable victims yet there's an enhancement attributable to the victims in this case. And I think it's predicated upon a finding of either religion or national origin. I think that's the probation officer's response. I think the government is held to the burden of proof of showing some sort of selection process regarding it.

THE COURT:

Okay. In the prior case I had cause to consider this.

What would you say in this case, Mr. Bowler?

MR. BOWLER: Your Honor, essentially every argument applicable to the last case is applicable here, plus more.

This defendant discussed attacking Camp Bondsteel in Kosovo. This defendant was working for a medical -- for a private firm that delivered medical goods, and, in that employment, had a chance to tour Fort Bragg and came back talking about how vulnerable Fort Bragg was.

This defendant was present, as I recall, for the discussions, the rapturist discussions, by Daniel Boyd about how to take down and attack, kill, cut off fingers at Quantico.

This defendant, beyond that, also additionally expressed a willingness to do anything that he could accomplish to attack America, including, I think the phrase was, drive to the Senate, implying some bombing attack. He also referenced Fort Dix at another point in the evidence.

I think the record -- it would be hard to be clearer that this defendant was so imbued with his radical Islamic views that he wished to kill Americans and wound the United States and retaliate against the United States for its policies every way he could, just as he said.

He even expressed a willingness to fly. I don't even know if he can fly, but he offered that in service, as well.

He's captured with that video cam bit of evidence that was played actually conversing with another individual who has been charged with terrorism over there.

The government has additional comments, but that would be the heart of our comments on that point.

THE COURT: Well, the testimony the Court heard from Melvin Weeks is compelling with respect to the Court's decision on this objection. And I have strong recollection, as well, of the videotape played of the defendant conversing with Mr. Asllani, or an individual believed to be Mr. Asllani.

I think there's more than enough evidence the defendants were conspiring to commit terrorist acts against the non-Muslims or nonadherents to this radical ideology that puts the defendant on the battleground and committed to killing those not of like mind.

So, I find this enhancement properly assessed in this case. I find it beyond a reasonable doubt that the defendant did intentionally select victims and in the manner that's referred to in Section 3A1.1(a).

Now, that turns the Court's attention and the defendant's to the next objection that you wish to be heard on, and that is with respect to the three-level enhancement for targeting official victims, 3A1.2.

MR. McAFEE: Your Honor, the probation officer's response to the objection, I'm unclear whether we're talking about Count 2 or Count 11. Count 11 clearly, when you're -- the count of conviction is a conspiracy to murder federal employees, federal officers, and that would seem to be self-fulfilling as to this objection. However, I am uncertain, as I stand here today, whether the Court can use an element of the offense of Count 11 to then turn around and impose an enhancement on anything outside of Count 11.

THE COURT: Okay.

MR. McAFEE: And I don't know that the conspiracy to -- the government's put on any showing that a conspiracy to kill, murder, maim overseas necessarily applies in Mr. Sherifi's case to American military personnel. We know that Mr. Sherifi testified at trial and we know that in his mind anyone he refers to as kaffir, not military personnel at Bonsteel, but the occupiers and the Serbian oppressors in his youth.

So, to be honest, I'm at a loss to argue to the Court whether the simple conviction on Count 11 is sufficient to sustain the objection -- or sufficient to sustain the enhancement for an official victim being, in essence, the victim.

THE COURT: Okay.

MR. BOWLER: Your Honor, my comments as to the last point would be largely applicable here. If Camp Bondsteel was the only example, perhaps Mr. McAfee's argument would give us pause. But in context it's clear he wanted to get his -- to do violence to every official American representative he could get access to, Bondsteel, Dix, Fort Bragg, Quantico, Washington, D.C. He mentions the mall. I think the record is very clear that the enhancement is appropriate.

THE COURT: I think the enhancement is properly made under the facts and circumstances established here. I think the defendant in this -- before the Court now was very motivated to victimize government officers or employees, and the offense of conviction was motivated by the status of these individuals in the military, in particular.

I recall some of the testimony again from Melvin Weeks as to remarks this defendant made and assertions that he made, and it's very clear what his propensities were.

So, I believe the probation officer correctly assessed that 3A1.2 should apply. And I'll move on now, unless there is another legal objection, to the terrorism enhancement, as that's very compelling, where your client has no criminal history and moves from a zero to a 6 because of this.

MR. McAFEE: Exactly, your Honor. It is, in our opinion, a draconian step and would need to be applied very carefully if it is to be applied at all.

In this case, your Honor, the Court must make specific findings to apply this enhancement as to my client's intent to commit any of these specified offenses, which is calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct.

And I think Mr. Bowler's comments thus far foreshadow that, yes, my client did discuss various places around the world, places where he had lived, places where he had talked about going, but never really went.

Again, your Honor, given the jury's decision regarding Count 11, I don't know if I'm simply barking up the wrong tree, but I think the Court needs to make some kind of finding as to my client's particular intent. I don't want to stand here and repeat my closing argument, because that's what I would do if I could, and have the Court view the evidence different from the way the jury did. But I stand here now having to respect that decision.

Thank you.

THE COURT: And at issue is an enhancement that states if the offense is a felony that involved or was intended to promote a federal crime of terrorism, increase by 12 levels. And, in this case, the defendant's criminal history category shall be VI.

And the application notes incorporate a law by reference which defines the federal crime of terrorism as having two very distinct parts. And this is where the issue lies. The offense that is calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct and is a violation of enumerated law. And so, the Court's caused to focus very squarely on the motive and the intent of the defendant.

What says the government?

MR. BOWLER: Your Honor, the evidence in this case captures the defendant in a discussion with Mr. Eddarkoui vigorously endorsing, arguing against Eddarkoui's position that suicide bombing is immoral. The defendant felt very vigorously that it was just fine when used against kuffar.

Another bit of evidence that we should give note to is the defendant passing on with approval to Mr. Weeks, the informant who worked in Kosovo, a tape capturing a beheading, a live beheading, with Mr. Sherifi's endorsement.

Mr. Sherifi has just expressed an absolute dedication to the most violent form of radical Islam that we are aware of.

He's convicted of both conspiracies, and properly so. I mean, three conspiracies, Count 1, Count 2, and also the conspiracy to murder military individuals on the continental United States.

The government recalls his testimony on the stand, which we believe heightens the conclusion that he stands before the Court absolutely unrepentant. He was willing to spin, evade, just refuse to answer questions or tell what were clearly in the context of the evidence that's been brought forth just untruths, with seemingly no compunction.

From the government's perspective, at least, there was no effort at honestly addressing the evidence against him. He just denied slickly everything, bringing to mind one of the precepts of radical Islam, that war is deceit. He endorsed virtually every form of barbarism that has captured our headlines in recent years.

We think the terrorism enhancement is fully applicable to him.

Counsel uses the word "draconian." The government would see it from the perspective of what is necessary to protect society from him.

He stands before the Court, some over two years now into this litigative process, completely unrepentant. He ignores -- we found it interesting that on this point --

defendant submits his own letter stating his difficult childhood. What he seems to lose track of is the United States took action, military action, risked men and arms, to stop the Serbs predation in Kosovo, to stop the things he complained about. The United States then takes Mr. Sherifi in, and his family, and shelters them here and gives them a chance for a new life, which to their credit they're apparently taking advantage of.

Mr. Sherifi, despite that history, becomes so enamored with the barbarism that he has -- the evidence shows him endorsing, that he ignores that and wants to literally kill members of the country that have shielded him and taken him in.

That part is difficult, I think, for many of us to even think about. How do you get from point A to point B.? We don't ultimately know. We think that form of hate, of distilled hate, of viciousness, preexisted Islam. But society has to do what is necessary to protect itself from it. And he is the personification of it at the moment.

We think that the sentencing enhancement is absolutely supported by the evidence, by the factual presentation in court, and should be imposed.

MR. McAFEE: May I respond, your Honor.

THE COURT: Yes.

MR. McAFEE: With due respect to Mr. Bowler, I fail to see how any of what he's talked about brings the Court to the causal connection between the conduct, whether he endorsed barbaric behaviors or not, does not comment in any way how any of that affects the conduct of government or to retaliation against government conduct. Nothing in these videos, nothing about the discussion of suicide bombing, deals with government conduct or government retaliation, and that's how we get to the enhancement for the federal crime of terrorism.

THE COURT: Well, I'm thinking about his efforts to support the actions of Mr. Asllani. And while he's in Kosovo interpreting and translating radical ideology, he's -- I would reasonably conclude that's conduct calculated to influence or affect the conduct of the government by intimidation or coercion. How would you distinguish that?

MR. McAFEE: Your Honor, as to Mr. Asllani, until the last day of Agent Minella's testimony, we didn't even -- the jury didn't even make a connection between Ayman Hattab and Bajram Asllani being the same person. There was very little evidence as to what Mr. Asllani is up to, was up to, what terrorist acts he undertook, if any, what organization he may have belonged to or not. My client's the one who explained that Bajram Asllani to him was someone who served in the Kosovo Liberation Army, and that was the context in which he knew him.

His translating of these documents, again, may be reprehensible. It may be a way to spread propaganda that frankly serves no purpose on earth other than to spread hatred. I don't know. But how does that affect or influence government conduct? Or how is that a retaliation against government conduct? We don't know what it's a retaliation against.

If we're painting with that broad a brush, we can say he was convicted of Count 11, let's move on. But we can't do that. There has to be specific findings as to my client's intent.

THE COURT: Well, I think the evidence would support his return to the United States in 2009 with the intent to solicit funds and personnel to support the mujahidin, and with some hopefulness on his part that he would be able to secure farmland from which to launch various challenges against military occupation or intervention, however one would characterize it. There certainly was some testimony about his hopes to create a place to house mujahidin.

How would you distinguish that, and that destabilization and consequence of that type of an action?

MR. McAFEE: Well, my first reaction is that I believe he testified that that was not his intent to do so. But, even if we're talking about establishing a base for mujahidin within the context that he testified about, it would be against Serbian soldiers. And I don't know if this enhancement applies against government's other than the United States.

If it is to be applied against conduct retaliatory to the United States or attempting to influence or affect the United States Government, I don't see how the purchase of farmland in Kosovo has anything whatsoever to do with that. There was very little evidence -- although Mr. Bowler was correct, there was a discussion about Camp Bondsteel, but there's very little evidence as to what the plan could have accomplished in connection with buying farmland and some vague, unknown attack on Camp Bondsteel.

That's not what my client was convicted of. My client was convicted of a conspiracy regarding a base in the United States. And, again, purchasing farmland or being given the money to maybe buy farmland -- we don't know if it was accomplished, but supposedly to buy farmland, again, is not tied to any kind of government function or any kind of retaliation against government action.

THE COURT: What about Quantico?

MR. McAFEE: Well, Judge, Quantico is -- as you know from our arguments to the jury, is a real sticking point with us, because Daniel Boyd is the one who created the Quantico issue, and then he gets on the stand and agreed with me -- and I think he called it -- pardon me, these are his words -- pure crap. That this alleged issue regarding Quantico was Daniel Boyd's creation. And the only conversation where we hear about Quantico, and it is chilling, but it's from Daniel Boyd to Eddarkoui, the government informant. It is not involving Hysen Sherifi. This was all a clip that was cut off as Mr. Sherifi approached these two gentlemen.

We don't know what was said afterwards. But Daniel Boyd went on some -- he says to go back and look at where he grew up. The government says it was surveillance or for scouting out the area to determine how to conduct this attack. And then Daniel Boyd goes on this eight- or nine-minute story about how to attack Marine Corps Base Quantico and residential areas. And only by mentioning his name, my client's name, does he get drawn into that.

And then the boys said, well, I saw them talking about it, but I'm not sure what was said, because they weren't part of the conversation.

I don't know if anybody is going to say this, but Daniel Boyd's crazy. At least, he was at that point. I mean, he was delusional and so much as admitted it on the stand. And then absolutely flat out says there was no conspiracy about this. We talked about military bases because I grew up on a military base. He was near a military base. He wanted to go on to Fort Bragg at one point. But there's nothing further than that that would seem to indicate that Mr. Sherifi took any kind of steps regarding Quantico at all.

He didn't go on Google Earth to look at maps. He didn't go and pinpoint where the residential areas were. He didn't sit there and think about how am I going to have people come down from the hills overnight, and all that stuff that Daniel Boyd talked about. That had nothing whatsoever to do with Mr. Sherifi.

So, again, I don't think this enhancement can be applied unless we show some connection between this defendant and his actions and the government conduct or retaliation against government conduct.

THE COURT: All right. What's the position of the government as to the reference to government in this provision?

MR. BOWLER: Your Honor, the American military is an extension of the United States Government, and pointedly, as to this factual scenario and the issues presented here, it's the arm by which we have fought radical Islam all over the globe. Camp Bondsteel is a good example of that. Fort Bragg is the basis of many troops that are engaged both in Iraq and in Afghanistan. That's well-known. Fighting is the great Satan, the United States, is one of the precepts of radical Islamism. The defendant is steeped in radical Islam.

In addition to that, we have his mention of Fort Bragg and Washington, D.C., the seat of the government, in addition.

I don't -- I think it's so integral, it's perhaps hard to recognize. But this -- it's so integral to radical Islam. But, in addition to that, we have his specific mention of all these military targets, which have no other reason or impact to him except that they represent the base of strength that America uses to project strength in fighting radical Islam, which is his sworn moral obligation, in his own twisted mind, that he wants to lash out against any way necessary.

THE COURT: How do you view his attempts to corrupt Melvin Weeks, a reservist, discharging, you know, duties in the military in Kosovo? Do you view that as an example of influencing the conduct of the government?

MR. BOWLER: Yes. I think it certainly includes that. It's an age-old tactic, if you can, to demoralize the soldiers that were opposing you and to get them to switch sides or to turn on their own country, if you can. It's certainly that.

And I think it's probably also true that -- well, I know it's true that radical Islam would first like to convert all of us to their ideology, to save them the fight. Absent that, the option is to kill them. Offer them salvation in their mind, and if they refuse it, kill them.

But the fact that weeks is an active-duty soldier who he's trying to subvert is a concrete way to undermine Camp

Bondsteel. Weeks has access to Camp Bondsteel, and he knows that. He sees him in uniform. He knows exactly where he came from. Weeks appears in uniform when he goes to the local mosque. And that's how he happens to make contact with this individual, because he seeks him out.

I think the Court does -- that's an excellent point. It's a very concrete way of showing that he's trying to get access to attack an official arm of the United States. But there are a number others in the evidence of this case.

THE COURT: I remember, with respect to Mr. Weeks' testimony, that he indicated he had established very positive relations with members of the Kosovan community who shared his faith during his visits to the mosque, and then, when he began to associate with Mr. Sherifi, those individuals shunned him.

Is there anything else that you want to say?

MR. BOWLER: May I have one moment? I'm sorry, your Honor.

(Pause.)

I believe the case law is fairly clear that in the term of terms of that enhancement, when it says government, it dozen not only mean the legislative branch, it means all the branches that would be part -- the projection of American authority in government, including the military.

THE COURT: I don't think it means the Kosovan government, do you?

MR. BOWLER: I think it actually does include -- I was reading *Hammoud* last night -- it can include essentially any established legitimate government. And in some of the other cases they cite that fact, the effort was to desire to overthrow the Pakistani government, other governments, even Arab governments which had fallen into monafiq status in their minds.

THE COURT: Do you agree, Mr. McAfee, with that interpretation?

MR. McAFEE: Judge, I don't think the reach of United States law could outlaw conduct that would occur wholly within another nation, where defendant's intent has nothing whatsoever to do with United States Government but with some other foreign and sovereign power.

I'm trying to recall *Hammoud* myself. It's been quite a while since I've read it. I have no idea whether that stands for that proposition, so I can't --

THE COURT: Well, I don't think I need to decide that in this case. I think there's more than enough of record to permit the Court to find by clear and convincing evidence that this enhancement is properly accorded here. Its purpose is to punish defendants more harshly when their wrongs served an end more terrible than other crimes, and undermining the military, as was the goal of this defendant, and supporting jihadists against whom the military was engaged, and developing a platform for future campaigns.

All of this compels the Court to conclude that this defendant did have the motive and did exercise the intent to influence or affect the conduct of government by intimidation or coercion.

So, I do agree with you, Mr. McAfee, you know, much -- or certain aspects of the government's argument doesn't fall within that province, but there are clear markers and indicators in this case that your client needs to be -- is one of those people to be punished more harshly because his wrongs served an end more terrible than other crimes.

The facts here speak abundantly to the motive of this defendant to support terrorists and to act in this capacity. So, I'm compelled to say he is a level VI, unless there's something else.

Of course, I'm free to disregard the advice of the guidelines and have a great deal of discretion.

I think you have very thoughtfully presented the objections which were most needing to be heard in this case. Is there anything else?

MR. McAFEE: Not by way of objection, your Honor.

THE COURT: Okay. So, this is the advice of the guidelines. And now the Court would turn to the factors set forth in 18 United States Code, Section 3553, and turn more particularly to your motion, where you would urge the Court that a guideline sentence does not accomplish the purposes of sentencing.

So, I've read what you've had to say and reflected on it, and I am conversant to the extent that I've been educated by the filings in this case about your client's background and history. And, as I said, it is a very difficult one that he has endured. And, as Mr. Bowler has said, this country has given him much.

So, what is a sentence that's sufficient but not greater than necessary?

MR. McAFEE: Your Honor, my role right now is to plead for my client's life. He's 27 years old, and he's facing a life sentence.

Ordinarily, Judge, when I stand before you in conspiracy cases, they tend to be, in this Court, given our patterns of prosecution, they tend to be drug cases. And we sit here and we argue over what drug weight is attributed to this defendant based on transactions or whatever it may be. And we have some sort of objective quantum against which to measure a defendant's culpability.

We don't have that here. It is, in essence, in terrorist cases, it is one drop is enough. It is so toxic that either you're in or your out. There is no lesser role, no greater role. There is, as I said, a very broad brush. And that is, understandably -- that is the culmination of the reaction of the United States in great part to 9/11. The laws changed, the guidelines changed, sentencing procedures changed, everything did. So, as this point we have someone who is held up against generally what we consider one of the worst crimes in the United States -- terrorism.

Mr. Sherifi encountered Daniel Boyd when he was about 24 years old, and this period of between 24 and 26 is what we're really talking about. For the first 23 years of his life, however, he was not this person, as you've seen from every letter from his family members, who are all right here in this row. From their testimony at trial, he was not this person who was captured on these tapes and these audio recordings and everything played for the jury. He was completely different.

So, we don't know, if that person were sitting here today, what he would say, what he would have done, how he would have testified. What you have heard is someone who's been through that what I would contend the radicalization movement. I don't want to give it that level of organization, but it's a -- as Daniel Boyd said, a corrupt ideology that allows Muslim men to talk about jihad the way we'd talk about coffee and doughnuts.

Mr. Sherifi -- and I don't want to belabor the point, Judge, but he grew up in a war-torn country. His loyalties were to his family. His loyalties are still to his family.

Not simply the family here in the United States, but his wife and child in Kosovo. His extended family in Kosovo.

After the family was forced to leave that country, he came here and took steps that no 15-year-old should. He became, in essence, a surrogate parent. He taught English to other kids. He went and got a job. At the same time, finishing his education. This wasn't a kid who got to sleep late and goof around on weekdays. The only escape he really had, and you can tell from his biography, is playing soccer.

After school and after a little bit of time at Wake Tech, Judge, is when Mr. Sherifi began to think there's something more than this Western life for me, and that's when he began this journey within himself and this journey across the globe, to go back to Kosovo, which is the environment where he grew up. It's an environment that's -- Albanians, I think, are some 95% Muslim, Albanians within Kosovo. And he's more accepted. And it's more comfortable for him.

The problem is in that environment it is also more comfortable to talk about things that here in this country, following 9/11, we don't talk about. Or, if we do, we talk about them in gravely serious terms.

Something happened during that time frame between this journey to go back to what he considered a better life, a simpler life, perhaps a more productive life there in Kosovo. That combined with the interaction with Daniel Boyd and the --

well, the corrupt ideology of Daniel Boyd. The craziness. The violence. Something happened in there that changed that young man into someone to be feared.

A life sentence, your Honor, is going to say that's bad enough. That's all it takes. Two years out of a 26-year life can throw away the first 24.

I would contend to you that a life sentence for a man who's 27 years old is incomprehensible. We measure our lives, we all do, by milestones within them. College takes four years. I've been married almost 12 years. Things like that. We measure it in chunks of our life. There's nothing in my life that can compare to saying -- especially when I was 27 years old -- to life, 40 years, 30 years, 30 years and a month, which would be the absolute minimum sentence this Court can impose. There's simply no milestone or measurement against, because he simply hasn't been alive that long.

The only thing I can offer, Judge, is what I put in the sentencing memorandum, that a life sentence for Mr. Sherifi would offer no hope whatsoever. There is no light at the end of the tunnel. It is a sentence to die in prison.

If we don't have hope, we don't have a reason to go forward. We don't have a reason to change. We don't have a reason to, as Mr. Bowler said, repent. Why would we? Nothing will ever change.

I haven't given you any suggested sentence, your Honor.

I know the Court's discretion is from zero to life. It's the biggest range we have. I'm simply asking for something less than life.

THE COURT: Well, I have no discretion --

MR. McAFEE: As to the 30 years.

THE COURT: Right.

MR. McAFEE: I understand.

THE COURT: But on the others, Count 1, Count 2 and 11, I do. And, obviously, I have discretion with respect to the advice of the guidelines. But with the mandatory minimum of not less than five years on Count 4 and not less than 25 years on Count 8, Congress has given the Court no discretion.

MR. McAFEE: And I agree, Judge. And I don't mean to suggest that. As I said, if the Court were to simply say, okay, I'm going to give him one month at the absolute minimum on all the conspiracies, he still has to pull 31 years, five years longer than he's been alive.

THE COURT: Is there anything further you want the Court to consider before I invite Mr. Sherifi to say something?

MR. McAFEE: Judge, I know you've reviewed our letters, 106 of those, and I know you've reviewed our sentencing memorandum which contains the remainder of our argument, and that is all.

THE COURT: I have reviewed that, yes, and the Court has received an extensive array of letters from family and friends and associates.

Mr. Sherifi, is there anything you'd like to say?

DEFENDANT SHERIFI: Yes, ma'am. May I?

THE COURT: Uh-huh.

DEFENDANT SHERIFI: Thank you for letting me speak, your Honor. I'd like to start by saying that I'm not a terrorist, I was not a terrorist. And I came to trial through my innocence. That is my right. And I came to trial so the truth is known, your Honor. It is sad and unfair that the jury was very unattentive, and two of them were sleeping, because I don't think you can make a judgment while sleeping. You know, that was very unfair.

But, like I say, I don't count the verdict. I was found guilty, so I'm still -- but I still believe that I'm innocent.

As everyone testified, there wasn't no conspiracy and I'm charged with conspiracy. I'm not charged with extreme ideology. If I was charged with that, then I'd understand. But I'm charged with conspiracy.

All the evidence that was presented, your Honor, it was all about Islam, it was all about belief. Various books, they're hundreds of years old, that clearly shows not only to me, but the people I've spoke to, it's all about ideology.

Kohlmann is not an expert on conspiracy. I think he clearly testified he's obsessed with radicals and their ideology. And to top it off, as they say, put the icing on the cake over here, as Kohlmann's statement having the same ideology means conspiring. So, that clearly shows that I'm being prosecuted for ideology, not for conspiracy.

Especially the PSR report, especially about my belief about jihad, especially about -- I have some transcripts, your Honor, if I may --

THE COURT: Uh-huh.

DEFENDANT SHERIFI: To dispute Weeks' statements about my ideology is clear. I will show it to you.

May I send it to her, or --

THE COURT: Would you like to bring it, Mr. McAfee, up here, or do you want to read from it, Mr. Sherifi?

DEFENDANT SHERIFI: Well, I can do it either way.

MR. McAFEE: Your Honor, several of these are transcripts that were prepared, not necessarily played at trial, and one of them is disk 146. It's an additional edition that I proposed, but we ended up not using this, but we provided it to the government.

THE COURT: Okay.

DEFENDANT SHERIFI: So, in his conversation with him I'm telling him, jihad, you know, is striving. It's not fighting. Okay. And then he agrees, yes, and then later on, as I'm about the leave, about a few seconds, I say, thank you for teaching me what you teach me today.

But he said that I taught him that that means fighting, which is a complete lie. And they stand by that. When they stand upon the banner of justice, obviously lying in front of everybody, supporting their informant that yes, I taught him that jihad means fighting, killing, he even went so far as to saying innocent children. But clearly here I'm telling him it's not fighting, it's striving.

It's ridiculous that I would say that, because jihad means striving.

And another one of their informants, which is Abdullah Eddarkoui -- this is -- it's disk 162 -- clearly, he's asking me, he brought up the conversation, asking me, what do you think jihad is? And I said jihad means when we strive for something. Or another statement I say is obeying Allah, obeying what Allah orders us to do, following the religion.

So, it's clear, your Honor, that I don't have that extreme ideology that jihad means killing, and all that stuff.

Boyd clearly stated in his debriefings that when I came back I stood up to him, and I was correcting him, because he's not my father. We don't have the same belief. So, even if you go by having the same ideology as conspiring, I don't have the same ideology as Boyd. It is clear.

And, your Honor, to my job that they mentioned and brought up, how -- what kind of terrorist would go around -- this was my second job, I was working two jobs -- go around delivering blood. I was, your Honor, sort of on a 911 emergency, I was on call. I would deliver blood from hospital to hospital. What kind of terrorist would deliver blood to save American citizens? And I even went to Fort Bragg, which was military servicemen, and delivered blood there.

A recording, which they did not provide, but they claimed that they provided everything, and many other recordings, your Honor, which would prove my innocence to the ideology, not just to conspiracy.

When I sent Mr. McAfee to ask for these recordings, they said we're not going to give them to you. Especially me coming to America. I had made it clear that I did not want to come back to America. I was comfortable where I was. Your Honor, I was born there, I was raised there. All my experiences and memories are from there. They set me up. They entrapped me to come back to this country, but they did not give those chats. Why? Because they would prove that I had no intention of coming back here, forget about harming anybody.

And I have the belief, as we said in Islam, and the Prophet Mohammad said, your Honor, best jihad is awarding justice to an oppressive ruler.

So, I proudly stand over here and tell oppressive tyrants that I'm not a terrorist, and they are the ones who are oppressing and not -- not following their own laws, which, according to amendment, Article 19, your Honor, it clearly says that everyone shall have the right to hold opinions without interfering -- without interference -- everyone shall will have the right to freedom of expression, the right to include freedom to seek, receive and impart information, ideas of all kinds, (inaudible) in writings or in print, a form of art, or to any other medium of his choice.

And, your Honor, I would just like to mention a few cases here, real quick.

A man who killed 270 people -- that's a village in my country -- in the Lockerbie bombing, gets 30 years and gets released after eight.

Another man bombs and shoots 77 people to death, and he's declared by the prosecutors at the time of the attacks that he was clinically insane.

Another man walks into a building in May -- and these are recent -- none of these people are terrorists. And, your Honor, just right here in North Carolina, travels on a plane with C-4 explosives, and is only facing ten years.

Your Honor, I'd also like -- we'll keep in mind that Zak Boyd was charged, save one, with the same -- the same charges as me. And, according to Rule 3553, which I'm sure you're familiar with it, but one thing I would like to point out there is rehabilitation, which is to provide the defendant with needed educational or vocational training, or other correctional treatment. I don't think prison has that. Not in this country, I'm not seeing it. If they have it, I'll gladly go and I know I will pass it, because I don't have a radical ideology.

And also, your Honor, I want to mention to you Rule 3582, which is imposition of a sentence of imprisonment. And it says that the Court, in determining whether to impose a term of imprisonment, and if a term is imposed, shall consider 3553, recognizing that imprisonment is not an appropriate means of promoting correction or rehabilitation.

We all want to better ourselves, your Honor, and there's ways to do it. But punishment -- and this is all because of ideology -- it is not -- it is clear, your Honor, it is very clear and obvious that it's all about ideology.

They never asked none of the informants, none of the ones who pleaded guilty whether they conspired with me. Why didn't they ask? Because there was no conspiracy, your Honor. I never meant -- I did say kill kuffar, yes, but I meant that for the people that have oppressed me.

I've seen this similar thing. The reason why we were oppressed and terrorized and killed is because of our religion, so I'm kind of seeing the same thing going on over here, which is very unjust, your Honor. Very unjust.

So, I'm hoping that -- just one second, your Honor.

(Pause.)

The least justice, your Honor, the least justice that this Court can give me is release me, give me time served so I can go back home to my country. I don't have no intention of coming back over here. I just wanted to be with my family, with my people.

We've been through wars. I had -- I had almost opened up a coffee shop before they set me up coming back over here. I was getting ready to open up a library, teaching people English on top of that.

My uncle just started a business. My family's been scammed out of $35,000 -- it's not 3500, it's 35,000, your Honor. My dad's going through cancer. They won't tell me what it is, but it's cancer. And, really, my family needs me more than I need them, but they need me.

So, like I said, your Honor, it's clear in the recording that I said jihad means striving, and the whole PSR report is about my belief is violent jihad, and this means killing. And they know. They've seen this, your Honor.

So, that's all I ask. That's all I've got, your Honor.

THE COURT: Thank you.

DEFENDANT SHERIFI: Thank you for the opportunity.

THE COURT: Okay.

MR. BOWLER: Your Honor, in the midst of his own allocution he comes very close to saying, by any definition of jihad, fighting against these unjust tyrants, pointing at the government's table, would be just. I don't think he articulated that exactly, but that seemed to be where he was going when he caught himself and stopped.

He brings up the witness Weeks. One of Weeks' responses, during cross-examination from Mr. Sherifi's counsel, was, yes, I said those things that are captured on the tape. I was trying to imitate the monster that he was trying to make me into, referring to Sherifi.

What kind of terrorist would deliver blood? The kind of terrorist who, (a) needs money, and (b), wants to infiltrate and scout out potential targets, which is what he comes back and talks about among the group.

He doesn't ask government witnesses did you conspire with so-and-so, because it's probably inadmissible testimony. It's not the -- it's the evidence that controls whether a conspiracy existed, not some particular witness' view of whether a legal standard has been met.

They entrapped me. That brings to my mind, at least, his own statement that he recently submitted to the Court. He shows up at Broughton High School, and the Broughton High School varsity coach sees him playing soccer and invites him immediately onto the varsity team. He doesn't like that because he has to work too hard, so he voluntarily goes -- this is his account -- to the JV team and is a star there.

No one entrapped him. America offered him a whole new clean life.

The government can't explain why he so fell in love with the barbarism that is that aspect of violent jihad, of the most radical element of Islam, but he did. And the hate has become all-consuming with him. He gave us a window of that, I think, just minutes ago.

It is a tragic and sad thing that, at age 27, he's in the position he's in. But the more he talks, the clearer I think it is as to how the law ought to be applied in his particular case.

The government asks that he receive the maximum sentence on each and every count that's outstanding at this point. I think the only option at this stage is to protect society from him for as long as we possibly can. However draconian that might sound, what he sought to do to other American citizens, and anyone else who got in his way of effecting radical shari'ah law and the effect of radical Islam is more hideous than him sitting in a jail cell by far.

We ask that he receive the maximum on every count.

THE COURT: Have I heard the defendant fully, Mr. McAfee?

MR. McAFEE: Yes, your Honor.

THE COURT: All right.

(Pause.)

Okay, I'm ready to sentence the defendant.

I find the basis of the findings in the presentence report to be credible and reliable, and the Court adopts those as the Court's own.

I've considered the advice of the guidelines generally and specifically in this case, and those factors made reference to several times. The need, after considering the nature of the offense and the history and characteristics of the defendant, to fashion a judgment that promotes respect for the law, that discourages this type of conduct, that protects the public, and provides any needed treatment or care. And there are opportunities for that in the Federal Bureau of Prisons.

Pursuant to the Sentencing Reform Act of 1984, it's the Court's determination that the defendant be sentenced on the crime charged and convicted of in Count 1 to a term of imprisonment of 180 months.

I sentence the defendant on Counts 2 and 11 to a term of imprisonment of 180 months, all to be served concurrently.

The defendant is sentenced to a term of 60 months on Count 4, consecutive to the term on the other counts, and 300 months on Count 8, consecutive to any other term of imprisonment, producing a total term of imprisonment of 540 months in this case.

When the defendant is released from prison, he'll be supervised for five years. This term consists of a term of three years on Count 1 and five years on the other counts, all the terms to run together.

Within three days of getting out of prison, you'll report to your probation officer. If you break any law, possess a weapon or drugs illegally, you'll be in violation of the Court's judgment. There are some other standard conditions and some special ones.

First and foremost, when you complete your term of imprisonment, you'll be surrendered to an immigration official and considered for deportation. And if you're ordered deported, you will stay out of this country.

You will consent to warrantless searches and cooperate in the collection of DNA.

You will submit a urinalysis test within 15 days of getting out of prison and two tests thereafter.

There are five felony offenses at issue, and you'll pay a $500 special assessment.

I have considered very carefully the advice of the guidelines, and with respect to Counts 2 and 11 I have granted the motion for a variance and deported from a term of life to a term of 180 months, to create a total term of 540 months, which the Bureau of prisons does consider a life sentence.

The difference here is that there's a prospect that you might get out.

You'll get credit for your good behavior while in prison, and that can take close to two months a year off your sentence yourself. So, there's a small window there when you are released for you to be able to live a lawful, law-abiding life. And your age then will ameliorate many of the Court's concerns concerning the likelihood of further crime.

But it's only a sentence of 540 months that the Court can fashion that's going to protect the public, promote respect for the law, and discourage this type of conduct, which is about far more than what you were thinking about what you were doing and what you stood ready to do.

Mr. McAfee, before I impose this finally, are there any matters I haven't considered that you would wish the Court to note?

MR. McAFEE: No, your Honor. I don't know if the Court's willing to make a recommendation as to Mr. Sherifi, but given his father's condition I would ask that you recommend Butner. I don't think his classification would allow it, but I would ask that you make the recommendation.

THE COURT: I'll recommend Butner. I'll also recommend mental health treatment while in the Bureau of Prisons, and further vocational training and education.

Okay, is there consternation on the government's side?

Are there any matters you want to bring to my attention?

MR. BOWLER: No, thank you, your Honor.

THE COURT: Okay. And from the probation officer?

PROBATION OFFICER WASCO: No, thank you.

THE COURT: All right. Mr. Sherifi, this is the Court's sentence in this case. You can appeal if you believe there's something very wrong with your conviction or with this sentence, if you think it goes against law. You have the right to appeal, but you've got to exercise those rights quickly. You've got 14 days from the day the judgment goes on the docket.

If you can't afford the cost of an appeal, you can apply for permission to appeal for free. And, if you request, Ms. Rudd will prepare the appeal paperwork for you.

Does your client have any questions about the judgment or about his appeal rights?

(Pause.)

MR. McAFEE: Yes, your Honor. He's instructed me to file a notice of appeal at the appropriate time, but he has no other questions.

THE COURT: Okay. That instruction is noted on the record and will be memorialized in writing by Mr. McAfee. Mr. McAfee, your service on behalf of your client has been diligent and I compliment you on your discharge of your duties.

And you will get credit for time served, Mr. Sherifi, towards the sentence I've imposed today.

So, I put you back in the custody of the Marshals Service and take up Mr. Yaghi's case.

MR. McAFEE: Thank you, your Honor.

(Defendant Sherifi withdrew from the courtroom.)

(Defendant Yaghi entered the courtroom.)

THE COURT: Mr. Ayers, the probation office has prepared a report about Mr. Yaghi. Have you had enough time to review it and prepare for sentencing today?

MR. AYERS: Yes, your Honor.

THE COURT: And Mr. Yaghi, likewise, I want to make sure that you've read that report. Have you had enough time to do that?

DEFENDANT YAGHI: Yes, ma'am.

THE COURT: Are you ready for sentencing today?

DEFENDANT YAGHI: Yes, ma'am.

THE COURT: I want to give you an outline of how the hearing is going to proceed. You can go ahead and be seated.

I want to explain to you the process, and I think it will be helpful to your understanding. The Court must fashion a sentence that's sufficient, but not greater than necessary, to accomplish the statutory goals of sentencing as directed by Congress.

The law requires that I begin my sentencing decision by correctly calculating your advisory guideline sentence. The guidelines have been made advisory by the Supreme Court. But the sentencing guidelines are a tool that are implemented by Congress to suggest an appropriate sentence based primarily on the severity of the defendant's criminal conduct to the extent of his or her previous criminal history.

I may accept any undisputed portion of the report, and there are many parts of this report that are disputed, I recognize, as a finding of fact in establishing a range. And I am required to consider objections and resolve them as they may bear on the guideline range.

And the burden is on the shoulders of the government to prove facts underlying any enhancement, as the burden is on the shoulders of the defendant to show that any downward adjustment is warranted.

I've said, and it's true, the sentencing guidelines are advisory. I've also explained I have a great deal of discretion in imposing a sentence above or below the advisory guideline range. I have no discretion concerning any mandatory minimum that Congress may have established.

If I believe it's appropriate to go above or below the guideline range, that must be based on a determination that a sentence in that range is necessary to accomplish the goals of sentencing.

I need not even assume that the guideline range is reasonable, however.

Once I've finished calculating the guideline range, I must allow both sides the opportunity to argue for whatever sentence is felt appropriate. And, under 18 United States Code, Section 3553, the Court bases its sentencing decision on the nature, circumstances and seriousness of the offense or offenses at issue -- and these are certainly very serious ones -- and the history and characteristics of the defendant, as well as the need to promote respect for the law, to discourage this type of conduct, to protect the public, and to provide any needed treatment for the defendant.

And certainly, before I fashion the sentence, I will address you personally, and you'll have the opportunity to speak or to present any mitigating information.

And then, finally, the Court will fashion a sentence based on an individualized assessment of those factors I've referred to and the information received, and the Court will explain why it chose a particular sentence.

Mr. Ayers, does your client have any questions about the processes that are required to be followed?

MR. AYERS: No, your Honor.

THE COURT: Okay.

Now, I do have before the Court your motion for departure or variance. I have, as noted in other cases, and this case as well, received letters of support from persons who wish to be heard in this matter. I have the benefit of this detailed presentence report, and also the knowledge accruing from presiding over the trial.

I guess, unless Mr. Ayers, you would like to suggest on behalf of Mr. Yaghi a different order, we might just start at the beginning.

MR. AYERS: That's fine, your Honor.

THE COURT: The beginning is the objection to the statement that the offense conduct concluded at time of arrest. The evidence establishes the defendant would argue that he had no contact with Daniel Boyd after 2007 as it relates to the conspiracy.

I've read the probation officer's response. Would you like to be heard further?

MR. AYERS: Your Honor, I would as to that point. Obviously, there was a trial in this case. We disagree with the findings, and the Court is aware of that. But the 2007 and '8 time period is important with regard to Mr. Yaghi.

I'm aware of the Court's findings or inclinations as it relates to Jude Mohammad and the visit by Mr. Boyd later on in 2009, but I think it's important for everybody to understand, and I think the Court knows, but I still feel that I need to reiterate it, these two trips were in 2006 and '7, and after that, my client basically parted ways with Mr. Boyd. Mr. Boyd confirms that. I believe that the evidence confirms that.

There is the information related to Mr. Mohammad. I believe that Mr. Mohammad came by Blackstone Market with my client one time in 2008. I believe his mother, actually, introduced him to Mr. Boyd as far as Mr. Mohammad.

The evidence in the case that I heard from the bar did not establish that anything related to this conspiracy materialized at that Blackstone Market that day.

The second aspect of his conduct would continue to be when Mr. Boyd came to see my client in jail. Well, my client didn't set that meeting up. Mr. Boyd came to jail with my client's mother and had discussions with him, and that's when my client stated that I'm not a snitch. I don't think that's an element of the offense.

My client had no control over that meeting. He didn't conceal anything or agree to conceal anything; he simply said I'm not a snitch, and that's it.

He did cooperate with the government. They met with him or tried to meet with him on a number of occasions. And that's true, he did not meet with them, and he did not talk about anybody else, period.

But that's our opinion on that. I think it's important, because I think the evidence in the case, after 2007, relate more to 2007 and the trip to Jordan.

Mr. Boyd went off the reservation and was mentally ill. I don't know if the Court will conclude that as a matter of law, but I think factually he left the reservation after his son died. And he became worse and worse and worse, and more and more hostile and aggressive, and accumulated his weapons and firearms. And Yaghi wasn't around him during that time period. The evidence doesn't show that he was around him during that time period.

And Yaghi didn't participate in the Caswell County shootings, the wiretaps from that extended period of time also reflected he was not there, your Honor.

So, I know you've heard the evidence, your Honor, so those were the important parts about the facts that I did want to reiterate, because I think it shows what contact we assume was criminal on behalf of Mr. Yaghi that basically ceased in 2007 and 2008 while Mr. Boyd was going in the exact opposite direction.

And you can make the findings, the government can make their arguments, but I do think that at the very least you should take that into account in formulating the sentencing at the appropriate time.

THE COURT: Okay. Who will be speaking for the government? Mr. Kellhofer?

MR. KELLHOFER: Yes, your Honor, I am.

THE COURT: All right.

MR. KELLHOFER: I believe that the probation officer's response is appropriate. We would continue to contend that an agreement not to snitch is an agreement to continue to maintain the discrete nature of the very conspiracy at issue, and the one that Mr. Daniel Boyd was concerned about. It was the entire purpose for the meeting. So we would continue to assert that the conspiracy continued up until the point of arrest.

THE COURT: Okay. I'm compelled to overrule that objection for reasons announced earlier and I'll summarize now. I would also make mention of defendant's continued training and preparedness as a part of the conspiracy. The defendant engaged in some target-shooting and practice with weaponry. Moreover, Daniel Boyd's visit to the jail came six months after Jude Mohammad left the country, or approximately six months. And your client moved into his apartment.

And I do recall Ms. Mohammad having some preliminary contact with Mr. Boyd and her son at the market, but I think the cachet or credibility that Jude Mohammad seems to enjoy very quickly, your client was intent on accruing some of that to himself by facilitating a more extended introduction at the market.

I would also note that his association with Mr. Hassan, who was well aware of the federal government's continued interest, and reasonably, one might infer, had shared that with your client. I think there was an understood need to keep secret and to keep breathing life in the conspiracy, and that was just hammered home for your client when Mr. Boyd came to the jail.

There were other contacts that suggest promoting the goals of the conspiracy through mainstream media, using it as a tool of propaganda and to proselytize others. So, I find no fault with the probation officer's determination that it wasn't until Mr. Yaghi was arrested that the offense conduct was concluded.

I understand he doesn't know Mr. Asllani. I don't believe we've heard any evidence that he does. I don't think that is informing the advice of the guidelines whatsoever. But your objection is noted as to paragraph 15. And I have no reason to dispute that you can't confirm whether that's a related case or not.

The matter of your client's ability to pay a fine, I'll reflect on that down the road. Certainly, he's not a wealthy man. He's not got a high school degree. He's had a very difficult childhood, and has not been very productive in his young adulthood. And so, I have no reason to think he has assets secreted somewhere.

I have neglected to say that I am familiar with his background and history. The probation officer has given the Court some detailed information. You have given the Court information. I have received letters, including from the defendant's mother and others. All have been reviewed.

I understand that the defendant has had a very difficult relationship with his father, been disavowed, in essence, or disclaimed by him, and has watched his father inflict physical abuse, allegedly, on his mother. It's another example of a defendant in this conspiracy having very difficult family relationships, particularly as it relates to the father, or lack thereof, in the case of Jude Mohammad.

In every single defendant in this case there is this characteristic of a void in the family life and tensions, and your client certainly demonstrates that in what I have read here.

I'm familiar, as I said, with his lack of an education. And I'm also familiar with his criminal contacts. He was -- pleaded guilty to giving a police officer fictitious information at the age of 16. He also pleaded guilty to the felony crime of felonious restraint. This involved Mr. Hassan and Kalled Shanab when, in December of 2008, they kidnapped and restrained a student at North Carolina State University. This defendant was originally charged with first-degree kidnapping, but pleaded guilty to the lesser offense.

The companion charge of felonious robbery with a dangerous weapon was, in fact, dismissed.

The defendant's supervision adjustment is reported as poor because at the time he was on probation he committed the instant offenses, and, therefore, resulted in his termination of probation.

Now, I note these pending charges in Texas, which I believe is where the father lives and runs a restaurant, according to the probation office. So, at some point when your client was down in Austin, Texas, warrants were issued for his arrest where, on June 27th of 2006, Mr. Yaghi was charged with felonious burglary of a building, felonious criminal mischief, felonious engagement in organized criminal activity and felonious possession of marijuana. He was released on bond, and these warrants remain pending.

This defendant finds himself, at this young age of 23, I believe, here in court as a midlevel criminal offender. That is in the range of between I and VI. His history puts him, with four points, in category III. If the enhancement for terrorism applies, that's doubled, and he moves to a VI.

He's charged with other crimes that are all noted on page 13. They don't influence the scoring. But he is in regular contact with the criminal justice system from the age of 16 going forward.

I've made mention of his family information. I'm aware of his travel that is reflected in the objections on the record and also in the presentence report, that he has demonstrated mobility, without any assets, though his family in Jordan, he left this country and traveled there in 2006.

He returned there in the company of Mr. Hassan when he couldn't get into Israel. And the probation officer believes, during that trip in 2007, he went for a brief -- or for a brief moment in time, albeit a few hours, was in Israel, also Germany, Jordan, Egypt, and the United Arab Emirates.

The advice of the guidelines, if this is correct, and, obviously, the legal objections await the Court's decision here, is that he should be sentenced to a maximum term of 180 months, which is the maximum on Count 1, where the guidelines would advise life, but the punishment cannot be more than the statutory maximum. However, your client faces life imprisonment, up to life, on Count 2, and the probation office believes the advice of the guidelines is life on Count 2.

His behavior can be supervised for up to five years when he gets out of prison on Count 2 and three years on Count 1. The fine could be as much as a quarter-of-a-million dollars, each count, though the guidelines suggest a range of between 25,000 to 250,000.

Because there are two felony offenses, there's a $100 special assessment times two, or $200, which is due today as an additional fine.

Now, this returns me back to the legal objections beginning at the bottom of the addendum. And I think this reiterates your complaints with the factual presentation.

I've heard these objections before on the phase of

Mr. Hassan's presentation. I certainly would tell you you can argue all the inferences in favor of your client. But as far as just blatant falsity, what would you point me to that I need to take up and decide right now?

MR. AYERS: Judge, with regard to paragraph 71, that's the 3A1.1(a) enhancement, three points, I believe that would be the first one. We would object to the Court imposing that enhancement.

We do not feel that there's been any victim identified because of race, color, religion, national origin, gender or sexual orientation.

Obviously, you've heard these arguments already this morning. I would submit to the Court that Count 2 is a conspiracy charge. Obviously, you can have a conspiracy without having identified any victims. To the extent that charge was found by the jury, I would argue to the Court that there were no identifiable victims.

The conspiracy progressed after my client pulled himself out of it, basically, in 2007 or 2008. Even later on, I don't think any victims were actually identified or targets, your Honor. I know at the time that my client met with Mr. Boyd they had general discussions about what his obligations were as it relates to his faith. There were always other people around, and those discussions so transpired to include Mr. Hassan and others, and testified to their having been indicted.

And with regard to the shooting or target practice that took place in late 2008, it's my impression that that wasn't related to this conspiracy. Nobody was there but Mr. Yaghi. So, the record, I don't think, would support a finding of that.

I understand you've made findings to the contrary earlier this morning, but I think, for purposes of the record, I need to put that on the record.

THE COURT: I think you do.

Does the government want to offer a particularized response concerning Mr. Yaghi as to the objection to 3A1.1(a)?

MR. KELLHOFER: Yes, your Honor. I would continue to ask that you consider the argument previously made during Hassan's sentencing proceeding, although I do think all of that information applies, and, in particular the very fact that this entire crime, the evidence that was presented, the argument, was all geared towards the fact that these individuals had a specific purpose, and their purpose was based off of a belief that required others to adhere to radical Islam. And if you did not, then you were fair game.

That is the entire core or underlying basis for the crimes that occurred. So, it's almost difficult to imagine how anyone could conclude that the intended victims were not based on religion.

Although I would point specifically to one of the statements made explicitly by defendant Ziyad Yaghi in his communications on his Facebook: "If you're a monafiq, I'm going to kill you." I think that pretty well sums it up.

THE COURT: Well, the Court has to find this enhancement proper and the necessary underpinnings beyond a reasonable doubt.

Did you want to add something else?

MR. AYERS: Your Honor, I don't think that one's beliefs, cultural upbringing or thoughts constitute a proper basis to make that jump beyond a reasonable doubt or clear and convincing, or any other standard, to find that my client intentionally selected any victim or property and targeted it because of race, color, religion and the other variables there, your Honor.

Certainly things were said on Facebook. I acknowledge that. That speech, one's religion is one's religion, and even yesterday or the day before the Supreme Court acknowledged that we still have that constitutional right and privilege in this country.

And I've heard repeatedly the discussions about beliefs in this case, and I don't believe that belief can constitute a jump or a basis for the enhancement, your Honor. There's got to be some action or activity beyond a basic conspiracy or these enhancements across the board do not apply. And I think the government's got to prove it to the Court's satisfaction.

I don't think it's fair for them to say I think he discussed a belief, and ask the Court to walk a tightrope. I think they have to introduce appropriate evidence for the Court to make a finding, your Honor. And I find that that's sorely lacking, your Honor, as it relates to Mr. Yaghi.

THE COURT: Do you want to be heard further?

MR. KELLHOFER: Again, only, your Honor, as I previously stated, it's very difficult to not want to engage in a back-and-forth and relitigate this case, because, obviously, the government has a very strong view of what the evidence presented.

I would again turn to the individual has been convicted of a conspiracy; a conspiracy that has elements that the defense has continually failed to appropriately appreciate and acknowledge.

In a court of law in the United States of America, 12 citizens determined that this individual, more than a belief, engaged in a conspiracy. That is what has occurred. The conspiracy was based off of statements made by this individual to include the one that I just stated. "If you're a munafiq, I'm going to kill you." That was what the conspiracy charged. That was the intent. That was the purpose of the conspiracy as it existed.

The government feels very strongly that the evidence that was heard throughout the trial. Your Honor was present and, obviously, has a very clear recollection and grasp of all of those factors.

THE COURT: The enhancement at issue provides that if the Court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, national origin, ethnicity, gender, and some other factors, the offense level should be increased by three. The advisory notes inform the reference and suggests that it's meant to apply to hate crimes. And it's a broader number of offenses that are at issue beyond traditional hate crimes.

And in this case, given the orientation of the propaganda, the defendant's orientation when he took to the Internet and generated or proliferated terrorist ranting, that he was conspiring to commit terrorist acts aimed at the kuffar or non-Muslims. That is what's at issue here. Those who didn't subscribe to his ideology very loosely cloaked in his religious denomination, I believe, beyond a reasonable doubt, that the enhancement's appropriate. And so, I will score that as the probation officer did.

I don't find the next enhancement appropriate for the reasons that I already articulated. I don't believe that 3A1.2 should be applied as against Mr. Yaghi. And so, unless the government wants to be heard further as to that, I would remove those three points. Though I note it's not going to have a bearing on the guidelines.

Do you want to be heard further?

MR. KELLHOFER: No. We'll simply stand by the argument previously presented, your Honor.

THE COURT: Okay.

So then we move to, by my organization here, Mr. Ayers -- and I welcome you to contribute to where you think is the next appropriate place to go. I think we're at 3A1.4?

MR. AYERS: Correct, your Honor. And in accordance with our objection to that, I think Count 2 qualifies as a predicate offense. But again, I think with regard to the second prong, the requirement is that the (inaudible), conduct by the government by intimidation or coercion or to retaliate against government conduct. I think the law, as I understand it, and as you said previously, requires specific findings of proof by the government, your Honor.

THE COURT: I'm adhering to the more critical burden, that is, that the government prove this by clear and convincing evidence, while there isn't a definite statement in the Fourth Circuit. And the real issue here is subsection A of 2332(b)(G)(5). And that is that the offense is calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct.

And the *Chandia* decision reiterates that the process that has to be applied is a careful, specific one, where the Court considers the motive and intent of the defendant.

And, in this case, as counsel's pointed out, the defendant was convicted of the crime of conspiring to murder, kidnap, maim and injure people in foreign countries.

What else should the government wish to bring to my attention in this case that bears on the findings that I have got to make?

MR. KELLHOFER: Yes, your Honor. We would again turn to the overarching conspiracy here, the entire purpose for which it existed. Again, as I previously stated, although I think it appropriate perhaps to restate again, as the defendant wasn't present for that proceeding, although his counsel certainly was present, the conspiracy existed with the entire purpose, as was testified to by multiple witnesses, all based off of a corrupt ideology. And that corrupt ideology believed that the murder of non-Muslims was appropriate and, in fact, obligatory. Moreover, the entire purpose of that corrupt ideology was to institute a form of government known as shari'ah law. That was the overarching purpose that existed for this -- these conspiracies.

That existed in every instance. Daniel Boyd gave multiple locations that he felt were all appropriate options. All of those because they did not have Muslim control or there were non-Muslims entering Muslim land. Those non-Muslims being governments, i.e., the United States.

The entirety of the conspiracy was to, in fact, influence and affect government conduct.

Again, you simply cannot have one without the other, as was testified to and as was displayed throughout the multiple testimonies given not only by individuals directly involved and present for the discussions, but as was described and defined by the expert witness for the government, Mr. Kohlmann.

The fact is Shari'ah law, as defined by this corrupt ideology, could not coexist with another government.

That's what I think to be the cornerstone.

However, turning to other specific pieces, again, there was discussion in which Daniel Boyd specifically stated that, when he had been talking about jihad, that meant fighting, and that that included fighting against NATO forces. That was a discussion at which this defendant was present. When he was talking about what he meant during that period and what it included, that's what it meant.

Some of the evidence that was utilized at trial included multiple statements by the defendant to include

Facebook postings. One of them of particular note in which he stated that he heard about the battle of Falluja was ferocious and that those individuals were running out of ammo, but they remained and fought and strapped themselves with explosives. Those were the people that were going to heaven.

And he was talking about, as is common knowledge, battles in Iraq and the battle of Falluja is well-recognized to anyone, most likely in America. It made quite a bit of news. He's talking about the battle in which American troops were engaged.

The propaganda that is possessed, distributed, encouraged, includes the *Constants of Jihad*, in which it explicitly advocates fighting for religious beliefs. And again, that goes back to the entire purpose here, which was to set up shari'ah law.

Additionally, we think that the locations at which the travel occurred are indicative, as well. The attempt to enter Israel we think to be indicative of this entire conspiracy, as again throughout the testimony we heard that the Likud in Jerusalem was a major target and to get rid of the Jewish population which was in control.

All of these pieces of evidence -- and, again, the underlying conspiracy of all appeared to point towards the points that were conducted for the purpose of influencing government.

Thank you, your Honor.

MR. AYERS: Your Honor, I'll respond. I'll try to keep it as brief as I can, but I don't believe that Facebook postings, propaganda, traveling to Israel or Jordan, or ideology of any type can satisfy those elements or requirements. This is a showing that the government has to make factually. It's not an argument.

The government's making an argument, just like in closing. I think you ought to do this or I think the evidence proved that. The simple fact is they've got to show the evidence factually would satisfy those findings. And I don't think that they've done that, your Honor.

I heard your rulings this morning. That's our position. If you want me to argue about it more, I will. But I don't think speech can cross that line or Facebook postings can cross that line. And I don't like the Facebook postings in this case. I can't erase them. But I don't think the Court can make the jump to say these elements, on a terrorism cross-reference, are satisfied by speech or religious beliefs. It just shouldn't do that.

If someone came in here and said, Bob went to Jordan and killed somebody, that's completely different. That person who was killed was a U.S. intelligence officer, and that person was planning the battle of Falluja.

That's different. We don't have that extreme jump in this case. We don't have that. What we have is bantering and talk and lyrics, which I don't like and nobody else does, and no action on the other side. There's got to be something shown that would show that there was an act to cause the government to do something on the other side. That's just lacking.

THE COURT: Okay. Well, I think there's something between the two. And I would agree with you that if it was nothing more than Facebook, that this enhancement wouldn't be proper and we probably wouldn't be exchanging statements today. But this is a defendant who was given a send-off in 2006 with those in attendance considering him going off to join the mujahidin in Jordan, who came back and allied himself in some respects with Daniel Boyd, and received further advice from him.

The first time he was over, Mr. Boyd directed him to a particular mosque, as I recall, where this was a known assembly point for people sharing this radical ideology.

Beyond the Facebook are the multiple pieces of propaganda that your client had access to, viewed, and -- and reasonably discussed.

You've also got his return in 2007, facilitated by Daniel Boyd, with his understanding that he would be meeting with him and they would be spending some time together.

Daniel Boyd understood that they were going to look for a battlefield. And he testified to that. Based on the conversation he had in the car on the way to the bookstore, where your client showed the weapon -- and albeit, it was identified as a pea-shooter -- this is a .22 caliber rifle -- it was what Mr. Hassan and Mr. Yaghi had. And it was certainly capable of doing harm. And they chose that opportunity to show Mr. Boyd that they, too, had weaponry.

So, we're going beyond words to actions, and we've got someone who has a demonstrated facility, very limited resources, but he's going back over and he tries to go to Israel. And these particular rants through the Facebook are very anti-Jewish, references to doing violence towards others, Jews and the kuffar.

So, I believe that your view is negligent of other facts and findings that the Court would make to determine that this enhancement is proper.

I still would have occasion to repeat that your client told Mrs. Mohammad that her son, in or around October of 2008, was where he had been the year before. And this is a gentleman who stated to a college employee that he was going to essentially commit suicide. It's my recollection Pakistan, but it may have been Afghanistan. But I thought it was I'm going to die in the mountains of Pakistan.

That was so stunning to the college administrator that for one of the only two times, I believe, in her many years of employment did she feel it necessary to provide a report to the school about the mental and emotional health as she had observed of a student.

So, while differing from other cases, I believe that this is one that comes within the ambit of an enhancement. I find by clear and convincing evidence that it is an offense that is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and that your client has demonstrated motive and intent based on these actions and others.

So, have I decided -- is there anything else that bears on the advice of the guidelines? Because you can return to all this at the next stage of the sentencing hearing.

MR. AYERS: Well, your Honor, I've objected -- it didn't make a whole lot of sense to me when I read it, but he received two additional points for being on probation, and the offense took place away -- I say he was out of the conspiracy. So, if the Court finds he was still in the conspiracy, I don't know that I can argue that. But I believe he was out of the conspiracy.

THE COURT: Okay. Well, your objection is noted. I believe the evidence supports that he was in. He continued in 2008. He introduced Mr. Mohammad to Mr. Boyd. And I believe Mr. Boyd corrected himself on the witness stand and said he met Jude Mohammad through your client. That was 2008.

And then, as I said, your client was committed to silence, and visited, in fact, by Daniel Boyd in 2009 because of the concerns of Mr. Boyd that he would begin to talk about the conspiracy. So, he was still protecting Mr. Boyd.

So, I think those two points are correct and your client is in that Category III, moved to a VI by virtue of the terrorist enhancement.

So the advice under the sentencing guidelines is as I spoke, 180 months on Count 1 and life on Count 2.

Your client is a young man -- I would also recall testimony about your client taking the microphone in the mosque and saying insightful remarks advocating violent jihad, and there was trial testimony that was very concerning, understandably so, to members of the mosque, and that there were people that he attempted to proselytize, who came within his purview, who actively worked to disassociate themselves from your client.

So, I think -- I think it incorrect to view all of this just in terms of his relation with Mr. Boyd. I think your client was a self-starter on his own and also preyed, to some extent, on Mr. Hassan, or at least encouraged him.

There was right much testimony concerning him bringing him to Mr. Boyd's house, introducing him to him, and wanting to promote to Mr. Hassan his understanding of the ideology that we talk about today as corrupt.

MR. AYERS: I'm assuming, for the record, I didn't make -- I asked the Court to consider the minimum or minor role. My recollection is that you did not allow that in Hassan's case, so I won't argue that.

THE COURT: You can -- did you make that objection?

MR. AYERS: I did, but I understand the Court's position. I would like it to remain part of the record, but --

THE COURT: Yes, it is noted on the record. And for the reasons that I've stated, it would be appropriate for me to overrule that.

Does the government want to be heard on these rulings?

MR. KELLHOFER: No, thank you, your Honor.

THE COURT: Okay. So, Mr. Ayers, what is a sentence that's sufficient but not greater than necessary, that gives due regard to 18 United States Code, 3553?

MR. AYERS: Your Honor, I filed a motion to downward depart and vary. Obviously, part of my brief is in three basic parts. The first is you have the authority, obviously, to formulate a sentence as you see fit under the statute now. The second part is the guidelines. The third part would be asking you to depart downward or for a variance.

I think the departure grounds aren't exactly allowed.

I'll make them anyway. But I would actually argue in terms of a variance.

I think that Yaghi is a young man. I think he was targeted by Boyd. And I laid out in my brief my opinion of it pretty strongly. And I think the testimony was that he had a way of targeting youth. He went through these phases with them. The testimony as I recall is that he didn't complete that with Mr. Yaghi, and he did with other people. And I believe Mr. Boyd's sons testified to that.

But I think a life sentence in the career offender level of VI overstates the seriousness of the offense. And I understand this is a terrorism case, but at the same time, the charge that provides for the lifetime sentence, your Honor, is -- overstates the offense. I say that in the context of I don't believe targets were selected based on the evidence presented, or that it ever got to that point.

Now, there are things that transpired after Yaghi was not there. I understand the Court's findings, but I don't give up that easy. I don't think he was around in Caswell County. I don't think he had any part or parcel of these conversations we're talking about. I think that conduct is much more egregious than the conduct that my client supposedly took part in and that the jury found.

I still say Mr. Boyd is a parent's worst nightmare. His conduct concerns me. And I think he's mentally ill. And

I think he targeted people like Yaghi because of their youth, because he knew that he didn't have a father to turn to. That bothers me. Because I'm a father, and I don't like the idea of having people targeting my children or my child. And 19 years old is a man and a child, too. I don't think you've crossed that bridge where you have the answers to everything when you're 19 years old. And Yaghi is only 23 years old today. He's been in jail for two years.

I do think that Boyd targeted these people. If you look, the ones he had the biggest impact on where his sons. They were young men. Yaghi's the same situation. Mr. Hassan is a college student. The guy was so bad and I say incredible, because no adult would believe him that the only people he surrounded himself with were young kids or children. Even at the camp-outs --

THE COURT: Well, you had Mr. Eddarkoui --

MR. AYERS: He's a government agent, your Honor.

THE COURT: He didn't know that. He doesn't -- I think your point is well-taken, but there were others, and Mr. Subasic had some age on him.

MR. AYERS: I understand that, but I think that they were well beyond where Mr. Yaghi was when Mr. Yaghi went to Mr. Boyd. I think the testimony was -- and I think the Court has to draw some conclusions, but there were broad-ranging discussions about the Muslim faith. It wasn't just jihad all the way along.

I think that was Mr. Boyd's ultimate goal, and it became more of a goal for him after he lost his son. And I wouldn't wish that on anybody.

And, obviously, the Court's got to sentence him at some point, but I think that he didn't deal with that well. That's what I would take from his testimony. And he became more and more radical.

But, at the same time, I understand what you say about Jude Mohammad, and Boyd wanted to see my client in jail, which my client had no control over. This is a time when my client had less and less and less contact with Mr. Boyd. There were wiretaps everywhere, and everything was recorded. And my client's not around on that, your Honor.

So, he may not have had departure technically from Mr. Boyd or the conspiracy, but he was not there all the time, either, your Honor. And he didn't handle the guns in Caswell County. He engaged in these conversations that --

THE COURT: But he did shoot at the cemetery.

MR. AYERS: I don't think there's one piece of evidence in this case, your Honor, that ties that in with this conspiracy. Not the individual that he shot with, not the other individual who came that day to shoot that aren't indicted that are Muslim, your Honor.

So, I understand the Court's concern with that, obviously, in forming the sentence. But at that point in time he hadn't been convicted of the felony that's part of the record as that relates to the Court today. And he didn't have a firearm. There's no evidence that they shot at targets, at government officials or people up there. And other independent witnesses that day testified it was a benign day.

I understand the Court's concerns, but I do think that there was a removal of my client from Mr. Boyd, and I want you to take that into account when you formulate a sentence.

The other things were -- you know, the two Boyds -- the Boyd sons received eight and nine years. And my client is clearly more comparable to them than he is to Mr. Boyd. Mr. Boyd is the head mobster, so to speak, by way of an analogy. There's got to be somewhere in between sentencing Mr. Yaghi without sentencing him to a mandatory life sentence, your Honor.

Another basis, I believe, is that a lot of conduct in this case is speech, and a lot of it's bad speech. A lot of it's distasteful and unacceptable. None of it should be posted on the Internet. Very little of it should discussed in group meetings. But a lot of people discussed these things openly, and that's part and parcel of our culture.

And I'll be honest with you, I've sat here as well as the Court did, and I think the Court knows my opinions. I have great concern about discussions formulating a basis of a conspiracy if it's talking about what my obligations are in accordance with my religion. That bothers me. Speech bothers me. And I look for more. This is the least I've had in a conspiracy. I've tried quite a few of them. Normally, I have active conduct where someone is shot at.

There were no bombs in this case. He didn't pick up fertilizer and drums of diesel fuel. He didn't manufacture a bomb. He didn't so much as manufacture a pipe bomb, your Honor.

But I think in the grand scope of things, the range is so wide in this case, obviously, I'm hoping you're going to grant a variance. I know you're going to sentence him, and I would ask that you sentence him to between 20 and 25 years, your Honor. And there's not much logic to that. That's twice what the Boyds got. That's more than Hassan got. And obviously you feel like my client brought Hassan to Mr. Boyd in some measure. I think you can conclude that. I disagree with that. And that's less than the father, your Honor. So I would ask that you do that.

THE COURT: Okay.

Does Mr. Yaghi want to say anything?

MR. AYERS: Yes, your Honor.

DEFENDANT YAGHI: In the name of Allah, the most gracious and merciful. I'd like to thank Allah for the blessing of Islam for allowing me to be a Muslim. And I'd also like to thank Allah for my mother, the best mother a son could ask for, who is praying for me day and night and has been with me since day one, and has done everything in her power to help me. I love her very much and I thank you for her. And I ask Allah to grant her paradise.

And I would also like to thank the Muslim community, my Muslim brothers and sisters, coming out here to support me today, and my other brothers, and for those few individuals who went the extra mile in helping my family and my mom through these trying times. Allah knows who you are, and your reward would be with him, inshallah, God willing.

Essentially, I'm here today for the assumptions and understandings, or should I say misunderstandings, of Boyd. He assumed a lot of things and he misunderstood a lot of things, and I think that's clear to anybody who's paid attention to his testimony.

And, in his mind, he might have assumed this, assumed this, and misunderstood this, misunderstood that. But, in his own words, he admitted that there was no conspiracy between me and him, and I think everyone has failed to realize that.

The fact that I've spent less than a total of 24 hours with Daniel Boyd, and that I may be sentenced to life in prison for that short amount of time that I spent with him, while his sons got eight and nine years, respectively, I don't believe that is just and I don't believe that's fair at all.

And I was found guilty by a jury not of my peers, but of complete strangers, who have no understanding of Islam, Muslims or foreign culture. And I don't know whether that guilty verdict was a product of their ignorance or should I attribute it to the prosecution's grand job of kidnapping, murdering and maiming the truth.

Although they did find me guilty, I maintain my innocence, and I will do so till the very end.

And now it's probably time for you to sentence me to prison, but a wise man once said that the one who is really detained is one who keeps his heart away from his lord, and the one who is truly a prisoner is one who is captive to his whims and desires.

So, you may sentence me to life in prison, and they may shackle me and cuff me and confine me, but so long as God wills, my spirit and mind will always remain free.

You may think now that my life is in your hands that you control my fate, but the truth is you don't, because there's no power except Allah. You cannot do to me any good or any bad except that he's willed. So, if you pass a sentence on me, it's only that he has allowed you to, because we are only human. And he has control over our destiny.

It is my obligation to inform you of a day on which no soul will be dealt with unjustly, a day when you and I will both stand before our creators, the judge of judges, and he would judge between us.

And all of mankind, rich and poor, old and young, famous and unknown, we'll all be begging for his mercy.

And those who have oppressed and transgressed will be rewarded with what they deserve. And those who did works of righteousness and acts of charity will be rewarded for what they deserve.

And I'm also obligated to invite you to Islam, the religion of truth, justice and sincerity, not the religion of terrorism, like the prosecution would like you to believe or the media would like you to believe.

And everyone here today will be a witness that you were invited to the truth and that you are fully aware of the truth. And also everyone here today will be a witness on the day of resurrection so that you are fully aware that we are believers in Allah and his last day.

And I bear witness there is no God but Allah and Mohammed is his messenger.

VARIOUS SPECTATORS: Inshalla.

THE COURT: Would the government wish to be heard?

MR. KELLHOFER: Just briefly, your Honor.

THE COURT: Okay.

MR. KELLHOFER: The defendant has done probably the best job possible of displaying to you a complete lack of remorse for his activity, the activity and the statements and the actions that occurred between 2006 and 2009.

It's one thing to stand here and claim what he believed occurred, when the evidence that was presented to you, was presented to the jury, and that you were able to hear was pretty clear, and which supports a lengthy sentence in this case.

This individual, throughout his activity expressed quite a bit of bravado at the feds on the case and his ability to avoid them. His statements that he's above the law, his adoration for the actions of those in the battle of Falluja, strapping themselves with explosives, and those -- those are the individuals who are going to heaven, in his view. Waging war is what he stated -- to settle the score with a sword is what he stated. Propagating the works of Anwar al-Awlaki, fighting the kuffar until there is no more disbelief.

Kuffar is one and the same -- Jew, Christian or munafiq. And, according to him, at the time he doesn't care if he's sentenced to life. Those were his words. He won't give up his religion if you throw me in prison.

The problem is that what he believes, and clearly did believe, was that violence is necessary. And I think there's much truth to what my esteemed colleague, Mr. Ayers, has stated with regard to Mr. Daniel Boyd. The fact of the matter is these are the words and these were the activities of Mr. Ziyad Yaghi.

He brings Omar Hassan to Daniel Boyd. He's responsible for that. And it was very clear from the evidence why he brought him.

He brought Jude Kenan Mohammad to Daniel Boyd, and, as your Honor has recognized a few times throughout these proceedings, how that turned out.

He stood up and made a speech at the Islamic Association of Raleigh. And, as noted, that made an example. You fix a car with a mechanic. Well, you fix the Muslim problem with jihad.

This is a lot more than words. These are the things for which he deserves to be punished for these crimes.

He traveled with a specific purpose during 2006 and did so again in 2007.

The evidence is resplendent with examples of the harm intended, of the hateful nature that existed, quite in contradiction to the claims a few moments ago.

The fact of the matter is the government would recommend, your Honor, that at a minimum Defendant Yaghi serve a full 30 years' confinement.

Thank you.

THE COURT: Have I heard the defendant fully?

MR. AYERS: Yes, your Honor, unless there's something you want me to discuss further.

THE COURT: Only if there's a matter that you want to bring to my attention.

MR. AYERS: No, I think I laid the other bases for departure in my sentencing memorandum for the Court to look at ahead of the time. I think I concentrated on the main ones today.

You know, a life sentence is just too long. I would ask that the Court depart. I think you have wide discretion in this case to do a that, based on the facts, as the government would argue and as the defense would argue.

THE COURT: I want to fashion a sentence that reflects hope for this individual, but it is a sentence that must reflect the seriousness of the offense and his history and characteristics.

And, as is noted, this is an individual who, for seven years now, the last two, though, his criminal episodes have been stopped by his incarceration. But he has demonstrated that he does think he is above the law. He has evaded the 147th Judicial District, where charges that are very, very serious and violent, stand still to be answered.

And the episode that occurred on the NC State campus in 2009, clearly -- a robbery with kidnapping and restraint of an individual, while it may have been nothing more than video games or something else, these propensities are very concerning and give action to words that are expressed by this defendant, a willingness to act on violent jihad, and a motivation so to do given his abhorrence of those who are nonbelievers.

When you open up his house book -- his house -- the house of Facebook, the pictures on the walls are very disturbing and the words that are spoken are disgusting.

The defendant's mobility, we don't really know what he did exactly in Jordan, but we know that he went with the first time having contacted Daniel Boyd in getting information about where to go to meet people with like ideas and propensities, and that he cared to solicit Daniel Boyd's guidance on nuances of how to purchase plane tickets, how to travel around Jordan, Israel, how to move around with prior discussions with Daniel Boyd, and had the understanding that Daniel Boyd's taxi driver was going to meet him and that he was actually going to be able to visit sites with Daniel Boyd.

And we have someone who has protected Daniel Boyd and produced for Daniel Boyd those children that you talk about him preying on. Several of them have been put forward by your client. One is overseas right now and is on the FBI's Wanted List. And, apparently, with grounds.

So, it's a sentence that needs to reflect on that, that needs to promote respect for the law, that needs to discourage this type of conduct, and needs to provide treatment or care. Your client has drug issues and he also needs to further his education.

Pursuant to the Sentencing Reform Act of 1984 and Supreme Court law, the Court, having considered the advice of the guidelines particularly in this case and generally, and the factors set forth in 18 United States Code, Section 3553, imposes on the defendant, Ziyad Yaghi, with respect to Count 1, the sentence of 180 months, and imposes on Count 2 a sentence of 380 months, to run concurrent with the sentence on Count 1. So, the defendant will serve 380 months in custody.

He will be supervised for up to five years upon his release. That's five years on Count 2 and three years on Count 1, concurrently.

When the defendant is released from prison during this term of supervised release, Mr. Yaghi, if you break any law, federal, state or local, possess a weapon or drugs illegally, you'll be in violation of the Court's judgment, and that could cause you to go back to prison.

There are some other standard conditions and some special ones.

While you're in prison I'm going to recommend you for mental health treatment, I'm going to recommend you for the most intensive drug-treatment program that the Bureau can make available, I'm going to recommend you for educational and vocational training.

I'm not responsible for doing more than recommending when I think it's appropriate. It's up to you and it's up to the Bureau of Prisons from this point forward. But if you'll submit to some of those programs, it will be very helpful to you.

When you get out of prison you will submit to a mental health program. You'll also participate in a program approved by the probation office for the treatment of addiction.

You'll consent to warrantless searches and cooperate in the collection of DNA.

There's a $200 special assessment which is due.

I'm going to impose a fine of $8,000 in this case. You don't have the ability to pay a guideline range fine. I depart from that.

I've also departed from the advice of the guidelines on Count 2.

I agree, I think life is devoid of hope for you, and I hope, going forward, that the defendant, upon conclusion of this sentence, can be a productive citizen.

The fine is due immediately.

I'll recommend him for Butner, anticipating that request.

MR. AYERS: Yes, your Honor.

THE COURT: Is there anything else, Mr. Ayers, that hasn't been considered?

MR. AYERS: No, your Honor.

THE COURT: And for the government?

MR. KELLHOFER: No, your Honor.

THE COURT: And from the probation offers?

PROBATION OFFICER WASCO: No, your Honor. Thank you.

THE COURT: All right. This is a sentence that the Court has fashioned, and now I advise you of how you can appeal.

Mr. Yaghi, you can appeal your conviction if you believe it's fundamentally flawed. You can appeal the sentence, as well. You have these rights. To exercise them you have to move within 14 days of judgment going on the docket. Mr. Ayers will talk to you more about that, if he hasn't already. And he will file a notice of appeal for you, if you so instruct.

If you cannot afford the cost of an appeal, you can apply to the Clerk for permission to appeal for free. And, if you request, the Clerk will prepare the notice of appeal for you. These are your appeal rights.

Mr. Ayers, would you ask your client if he has any questions about those?

MR. AYERS: None, your Honor. He's requested I file an appeal, and I'll do that within the time frame allowed.

THE COURT: All right. So noted on the record, and Mr. Ayers will follow up on that. And then there will be a matter of ordering the trial transcript.

Mr. Subasic remains to be the tried, and he needs to be tried as soon as possible. And after that, I reasonably expect I'll be sentencing Daniel Boyd.

And that will conclude for this period of time the matters at issue in this case.

Is there anything for the government, either -- any of the attorneys?

MR. BOWLER: Thank you, your Honor. No.

THE COURT: Thank you.

MR. AYERS: Thank you, Judge.

(Proceedings concluded at 3:11 p.m.)

* * *

CERTIFICATION

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Harold M. Hagopian — June 10, 2012
Official Court Reporter — Date